रजिस्ट्री सं. डी. एल. (एन) 04/0007/2003–05 REGD. NO. D. L. (N) 04/0007/2003—05

भारत का राजपत्र
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सं. 2] नई दिल्ली, जनवरी 4—जनवरी 10, 2015, शनिवार/पौष 14—पौष 20, 1936
No. 2] NEW DELHI, JANUARY 4—JANUARY 10, 2015, SATURDAY/PAUSA 14—PAUSA 20, 1936

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह पृथक संकलन के रूप में रखा जा सके
Separate Paging is given to this Part in order that it may be filed as a separate compilation

भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)

भारत सरकार के मंत्रालयों (रक्षा मंत्रालय को छोड़कर) द्वारा जारी किए गए सांविधिक आदेश और अधिसूचनाएं
Statutory Orders and Notifications Issued by the Ministries of the Government of India
(Other than the Ministry of Defence)

वित्त मंत्रालय

(वित्तीय सेवाएं विभाग)

नई दिल्ली, 23 दिसम्बर, 2014

का.आ. 44.—कौशल विकास निधि गारंटी कोष की स्थापना के लिए मंत्रिमंडल के अनुमोदन (मामला सं. 364) के अनुसरण में वित्तीय सेवाएं विभाग, निधि के व्यवस्थापक के रूप में एतद्द्वारा श्री वी. के. शुक्ला, संयुक्त निदेशक, प्रशिक्षण, नियोजन तथा प्रशिक्षण महानिदेशालय, श्रम एवं रोजगार मंत्रालय को निधि प्रबंधन समिति के सदस्य के रूप में नियुक्त करता है।

[फा. सं. 1/12/2011–आईएफ–II (पार्ट)]

उदय भान सिंह, अवर सचिव

MINISTRY OF FINANCE

(Department of Financial Services)

New Delhi, the 23rd December, 2014

S.O. 44.—Pursuant to the Cabinet approval (Case No. 364) for establishment of a Credit Guarantee Fund for Skill Development, The Department of Financial Services as a Settlor of the Fund hereby appoints Shri V. K. Shukla, Joint Director of Training, Directorate General of Employment and Training, Ministry of Labour and Employment as Member in the Management Committee of the Fund as an expert from labour sector.

[F. No. 1/12/2011-IF-II (Pt.)]

UDAI BHAN SINGH, Under Secy.

(राजस्व विभाग)

(केन्द्रीय प्रत्यक्ष कर बोर्ड)

नई दिल्ली, 8 जनवरी, 2015

का.आ. 45.—जबकि केन्द्र सरकार ने आयकर अधिनियम, 1961 (1961 का 43) (जिसे इसमें इसके बाद में उक्त अधिनियम कहा गया है) की धारा 80झक की उप-धारा (4) के खण्ड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारत सरकार की अधिसूचना संख्या का.आ. 50(अ) दिनांक 8 जनवरी, 2008 जिसे बाद में अधिसूचना संख्या का.आ. 1605(अ) दिनांक 2 जुलाई, 2008 और अधिसूचना संख्या का.आ. 1210(अ) दिनांक 21 मई, 2010 के तहत संशोधित किया गया है, के द्वारा औद्योगिक पार्क के लिए एक स्कीम तैयार व अधिसूचित की है;

और जबकि मैसर्स एलेडेको सिडकुल औद्योगिक पार्क लिमिटेड जिसका पंजीकृत कार्यालय पता 201-202, दूसरी मंजिल, स्पैंलडर फोरम, डिस्ट्रिस्ट सेंटर, जसोला, नई दिल्ली-110025 में स्थित है, गांव-चारगलियां, जेल कैंप सितारगंज, उधमसिंह नगर, रुद्रपुर, उत्तराखंड-262605 में एक औद्योगिक पार्क विकसित कर रहा है ।

अत: अब उक्त अधिनियम की धारा 80झक की उप-धारा (4) के खण्ड (iii) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार एतद्द्वारा इस अधिसूचना के अनुबंध में उल्लिखित शर्तों एवं निबंधनों के अधीन उक्त खण्ड (iii) के प्रयोजनार्थ मैसर्स एलेडेको सिडकुल औद्योगिक पार्क लिमिटेड द्वारा विकसित गांव-चारगलियां, जेल कैंप सितारगंज, उधमसिंह नगर, रुद्रपुर, उत्तराखंड-262605 में स्थित उपक्रम को इसके प्रारंभ होने की तारीख अर्थात् 30.3.2009 से एक उपक्रम और परियोजना के रूप में अधिसूचित करती है ।

अनुबंध

वे शर्तें और निबंधन जिन पर मैसर्स एलेडेको सिडकुल औद्योगिक पार्क लिमिटेड, नई दिल्ली द्वारा एक औद्योगिक पार्क की स्थापना के लिए भारत सरकार का अनुमोदन प्रदान किया गया है ।

1. (i)	औद्योगिक उपक्रम का नाम	:	मैसर्स एलेडेको सिडकुल औद्योगिक पार्क लिमिटेड
(ii)	प्रस्तावित अवस्थान	:	गांव-चारगलियां, जेल कैंप सितारगंज, उधमसिंह नगर, रुद्रपुर, उत्तराखंड-262605
(iii)	निर्मित न्यूनतम फर्शी क्षेत्र	:	15,000 वर्ग मीटर
(iv)	प्रस्ताविक औद्योगिक कार्यकलाप	:	जैसा कि औद्योगिक पार्क स्कीम, 2008 में परिभाषित है
(v)	औद्योगिक उपयोग के लिए निर्धारित आबंटन योग्य क्षेत्रफल की प्रतिशतता	:	75 प्रतिशत अथवा उससे अधिक
(vi)	वाणिज्यिक उपयोग के लिए निर्धारित आबंटन योग्य क्षेत्रफल की प्रतिशतता	:	10 प्रतिशत अथवा उससे कम
(vii)	औद्योगिक इकाइयों की न्यूनतम संख्या	:	55 इकाइयां
(viii)	औद्योगिक पार्क के प्रारंभ होने की तिथि	:	30.03.2009

2. औद्योगिक पार्क को उपक्रम द्वारा प्रस्तुत और उत्तराखंड राज्य अवसंरचना एवं औद्योगिक विकास निगम द्वारा जारी प्रमाणपत्र में यथा उल्लिखित प्रारंभ होने की तारीख अर्थात् 30.03.2009 को विकसित हुआ माना जाएगा ।

3. औद्योगिक पार्क का स्वामी एक ही उपक्रम होना चाहिए ।

4. अधिनियम के अंतर्गत उपक्रम को कर लाभ औद्योगिक पार्क में न्यूनतम तीस यूनिटों के अवस्थापित होने के बाद ही उपलब्ध होगा । औद्योगिक यूनिटों की न्यूनतम संख्या की संगणना के लिए किसी व्यक्ति तथा उसके संबद्ध उद्यमों की सभी उद्यमों को एक इकाई माना जाएगा ।

5. संबद्ध उद्यम की इकाइयों सहित कोई भी औद्योगिक इकाई आबंटन योग्य क्षेत्रफल के पच्चीस प्रतिशत से अधिक जगह नहीं घेरेगी ।

6. अधिनियम के अंतर्गत कर लाभ इस अधिसूचना के तहत अधिसूचित उपक्रम को ही उपलब्ध होगा न कि किसी अन्य व्यक्ति को जो बाद में किसी कारणवश अधिसूचित औद्योगिक पार्क विकसित करें, या विकसित तथा प्रचालन करता है अथवा अनुरक्षण तथा प्रचालित करता है ।

7. उपक्रम अन्य शर्तों को पूरा किए जाने के अधीन इस अधिसूचना में उल्लिखित औद्योगिक पार्क के प्रारंभ होने की तारीख के संगत कर-निर्धारण वर्ष से शुरु होने वाले पंद्रह वर्षों में से किसी निरंतर दस वर्षों के लिए आयकर अधिनियम, 1961 की धारा 80झक 4(iii) के तहत अपने विकल्प पर कटौती का दावा कर सकता है ।

8. औद्योगिक पार्क में स्थित औद्योगिक इकाइयां केवल वही कार्यकलाप करेंगी जिन्हें औद्योगिक पार्क स्कीम, 2008 में विनिर्दिष्ट किया गया है ।

9. उपक्रम को औद्योगिक पार्क के लिए अलग खाता-बही रखेगा तथा नियत तिथि तक आयकर विभाग को अपनी आयकर विवरणी दाखिल करेगा ।

10. यह अधिसूचना तब अमान्य हो जाएगी तथा मैसर्स एलेडेको सिडकुल औद्योगिक पार्क लिमिटेड, नई दिल्ली ऐसी अमान्यता की किसी अप्रत्यक्ष परिणामों के लिए पूरी तरह उत्तरदायी होगा, यदि

(i) आवेदन जिसके आधार पर केन्द्र सरकार द्वारा स्वीकृति दी गई है, में गलत सूचना/मिथ्या जानकारी पाई जाती है अथवा कुछ वस्तुगत सूचना इसमें नहीं दी गई है ।

(ii) यह औद्योगिक पार्क के अवस्थापन के लिए है जिसके लिए किसी अन्य उपक्रम के नाम पर पहले ही स्वीकृति जारी की जा चुकी है ।

11. उपक्रम प्रपत्र आईपीएस-II में एक वार्षिक रिपोर्ट केन्द्रीय प्रत्यक्ष कर बोर्ड को प्रस्तुत करेगा ।

12. इस अधिसूचना में उल्लिखित शर्तों के साथ-साथ औद्योगिक पार्क स्कीम, 2008 में शामिल शर्तों का उस अवधि के दौरान पालन किया जाना चाहिए जिसके लिए इस स्कीम के अंतर्गत लाभ उठाए जाने हैं । केन्द्र सरकार उपर्युक्त स्वीकृति को वापस ले सकती है, यदि उपक्रम किसी भी शर्तों का पालन करने में असमर्थ रहता है ।

13. केन्द्र सरकार की स्वीकृति के बिना परियोजना प्लान में किसी संशोधन अथवा भविष्य में पता चलने अथवा आवेदक की ओर से किसी वस्तुगत तथ्य को प्रकट करने में असमर्थता के कारण औद्योगिक पार्क की स्वीकृति अमान्य हो जाएगी ।

14. यह अधिसूचना मैसर्स एलेडेको सिडकुल औद्योगिक पार्क लिमिटेड द्वारा निर्धारण अधिकारी को फर्शी क्षेत्रफल के संबंध में दी गई सूचना के अनुसार उसके द्वारा सत्यापन/पता लगाने के अधीन होगी ।

[अधिसूचना सं. 2/2015/फा. सं. 178/121/2009-आ.का.नि.-I]
दीपशिखा शर्मा, निदेशक (आ.का.नि.-I)

(Department of Revenue)

(CENTRAL BOARD OF DIRECT TAXES)

New Delhi, the 8th January, 2015

S.O. 45.—Whereas the Central Government in exercise of the powers conferred by clause(iii) of sub-section (4) of section 80-IA of the Income-tax Act, 1961 (43 of 1961) (hereinafter referred to as the Act), has framed and notified a scheme for industrial park, by the notifications of Government of India vide number S.O. 50(E), dated the 8th January, 2008 subsequently amended vide Notification No. S.O. 1605(E), dated the 2nd July, 2008 and vide Notification S.O. No. 1210(E) dated 21.5.2010.

And whereas M/s. Eldeco SIDCUL Industrial Park Ltd., having its registered office at 201-202, 2nd Floor, Splendor Forum, District Center Jasola, New Delhi-110025 is developing an Industrial Park placed at Village Chargalia, Jail Camp, Sitarganj, Udham Singh Nagar, Rudrapur, Uttarakhand, 262605.

Now, therefore the Central Government, in exercise of the powers conferred by clause (iii) of sub-section (4) of section 80-IA of the Act, the Central Government hereby notifies the undertaking from the date of commencement i.e. 30.03.2009, being developed by M/s. Eldeco SIDCUL Industrial Park Ltd. as an undertaking for the Industrial Park located at Village Chargalia, Jail Camp, Sitarganj, Udham Singh Nagar, Rudrapur, Uttarakhand, 262605 for the purposes of the said clause (iii) subject to the terms and conditions mentioned in the annexure to the notification.

ANNEXURE

The terms and conditions on which the approval of the Government of India has been accorded for setting up of an industrial park by M/s. Eldeco SIDCUL Industrial Park Ltd., Uttarakhand.

1. (i)	Name of the Industrial Undertaking	:	Eldeco SIDCUL Industrial Park Ltd.
(ii)	Location	:	Village Chargalia, Jail Camp, Sitarganj, Udham Singh Nagar, Rudrapur, Uttarakhand, 262605.
(iii)	Minimum Constructed Floor Area	:	15,000 Square Meters
(iv)	Proposed industrial activities	:	As defined in Industrial Park Scheme, 2008
(v)	Percentage of allocable area earmarked for Industrial use	:	75% or more
(vi)	Percentage of allocable area earmarked for commercial use	:	10% or less
(vii)	Minimum number of industrial units	:	55 Units
(viii)	Date of commencement of the Industrial Park	:	30.03.2009

2. The Industrial Park shall be construed as developed on the date of commencement i.e. 30.03.2009 as mentioned in the Certificate furnished by the undertaking and issued by the State Infrastructure and Industrial Development Corporation of Uttarakhand Ltd.

3. The industrial park should be owned by only one undertaking.

4. The tax benefits under the Act will be available to the undertaking only .after minimum number of thirty units are located in the Industrial Park. For the purpose of computing the minimum number of industrial units, all units of a person and his associated enterprises will be treated as a single unit.

5. No industrial unit, along with the units of an associated enterprise, shall occupy more than twenty five per cent of the allocable area.

6. The tax benefits under the Act will be available only to the undertaking notified vide this notification and not to any other person who may subsequently develop, develops and operates or maintains and operates the notified industrial park, for any reason.

7. The undertaking subject to the fulfillment of other conditions, may at its option claim deduction under section 80 lA (4)(iii) of the Income Tax Act, 1961 for ten consecutive assessment years out of fifteen years beginning from the date of commencement of industrial park mentioned in this notification.

8. The Industrial units located in the industrial park shall undertake only those activities as specified in Industrial Park Scheme, 2008.

9. The undertaking must keep separate books of accounts for the industrial park and must file its income tax returns by the due date to the Income-tax department.

10. The notification will be invalid and M/s. Eldeco SIDCUL Industrial Park Limited shall be solely responsible for any repercussions of such invalidity, if

(i) the application on the basis of which the notification is issued by the Central Government contains wrong information/ misinformation or some material information has not been provided in it.

(ii) it is for the location of the industrial park for which notification has already been issued in the name of another undertaking.

11. The undertaking shall furnish an annual report to the Central Board of Direct Taxes in Form IPS-II.

12. The conditions mentioned in this notification as well as those included in the Industrial Park Scheme, 2008 should be adhered to during the period for which benefits under this scheme are to be availed. The Central Government may withdraw the above approval in case the undertaking, fails to comply with any of the conditions.

13. Any amendment of the project plan without the approval of the Central Government or detection in future, or failure on the part of the applicant to disclose any material fact, will invalidate the approval of the industrial park.

14. This approval is subject to verification/ascertainment by Assessing officer of correctness of figures pertaining to floor area as informed by M/s. Eldeco SIDCUL Industrial Park Ltd.

[Notification No. 2/2015/F. No. 178/121/2009-ITA-I]

DEEPSHIKHA SHARMA, Director (ITA-I)

विदेश मंत्रालय

(सी पी वी प्रभाग)

नई दिल्ली, 24 दिसम्बर, 2014

का.आ. 46.—राजनयिक और कौंसुलर ऑफिसर (शपथ और फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में केन्द्र सरकार एतद्द्वारा श्री सी. एम. शर्मा, निजी सहायक को 24 दिसम्बर, 2014 से भारत के कोंसुलावास, बर्मिंघम में कौंसुलर सेवाओं के लिए सहायक कौंसुलर अधिकारी प्राधिकृत करती है ।

[सं. टी. 4330/01/2014]

प्रकाश चन्द, उप सचिव (कौंसुलर)

MINISTRY OF EXTERNAL AFFAIRS

(CPV Division)

New Delhi, the 24th December, 2014

S.O. 46.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby authorises Shri C.M. Sharma, Personal Assistant in Consulate General of India, Birmingham to perform the Consular services as Assistant Consular Officer with effect from 24th December, 2014.

[No. T. 4330/01/2014]

PRAKASH CHAND, Dy. Secy. (Consular)

नई दिल्ली, 1 जनवरी, 2015

का.आ. 47.—राजनयिक और कौंसुलर ऑफिसर (शपथ और फीस) के अधिनियम, 1948 की धारा 2 के खंड (क) के अनुसरण में केन्द्र सरकार एतद्द्वारा (1) श्री गिरीश उप्रेती, निजी सहायक (2) श्री शिव प्रसाद, निम्न श्रेणी लिपिक तथा (3) श्री ओम प्रकाश, निम्न श्रेणी लिपिक, को 1 जनवरी, 2015 से भारत के कोंसुलावास, जद्दा में कौंसुलर सेवाओं के लिए सहायक कौंसुलर अधिकारी प्राधिकृत करती है ।

[सं. टी. 4330/01/2014]

प्रकाश चन्द, उप सचिव (कौंसुलर)

New Delhi, the 1st January, 2015

S.O. 47.—In pursuance of the clause (a) of the Section 2 of the Diplomatic and Consular Officers (Oaths and fees) Act, 1948 (41 of 1948), the Central Government hereby authorises (1) Shri Girish Upreti, Personal Assistant (2) Shri Shiv Prasad, LDC and (3) Shri Om Prakash, LDC in Consulate General of India, Jeddah to perform the Consular services as Assistant Consular Officers with effect from 1 January, 2015.

[No. T. 4330/01/2014]

PRAKASH CHAND, Dy. Secy. (Consular)

संचार और सूचना प्रौद्योगिकी मंत्रालय

(इलेक्ट्रॉनिकी और सूचना प्रौद्योगिकी विभाग)

नई दिल्ली, 1 जनवरी, 2015

का.आ. 48.—केन्द्र सरकार एतद्द्वारा राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 के नियम 10 के उप नियम (4) के अनुसरण में, इलेक्ट्रॉनिकी और सूचना प्रौद्योगिकी विभाग के प्रशासनिक नियंत्रण के अंतर्गत आने वाले प्रगत संगणन विकास केंद्र (सी-डैक) नामक स्वायत्त संस्था के वेलयाम्बलम, तिरुवनंतपुरम (केरल) स्थित कार्यालय, जिसके 80 प्रतिशत से अधिक कर्मचारियों ने हिंदी का कार्यसाधक ज्ञान प्राप्त कर लिया है, को अधिसूचित करती है ।

[सं. 7(2)/2005-हिं.अ.]

राजकुमार गोयल, संयुक्त सचिव

MINISTRY OF COMMUNICATIONS AND INFORMATION TECHNOLOGY

(Department of Electronics and Information Technology)

New Delhi, the 1st January, 2015

S.O. 48.—In pursuance of Sub Rule (4) of Rule 10 of the Official Language (Use for Official Purposes of the Union) Rules, 1976, the Central Government hereby notifies the Centre for Development of Advanced Computing (C-DAC), an autonomous sociey under the administrative control of the Department of Electronics and Information Technology located at Vellayambalam, Thrivananthapuram (Kerala) whereof more than 80% staff have acquired working knowledge of Hindi.

[No. 7(2)/2005-H.S.]

R. K. GOYAL, Jt. Secy.

स्वास्थ्य एवं परिवार कल्याण मंत्रालय

(स्वास्थ्य एवं परिवार कल्याण विभाग)

नई दिल्ली, 11 सितम्बर, 2013

का.आ. 49.—भारतीय चिकित्सा परिषद अधिनियम, 1956 (1956 का 102) की धारा 11 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए केन्द्र सरकार, भारतीय चिकित्सा परिषद से परामर्श करने के पश्चात्, एतद्द्वारा उक्त अधिनियम की प्रथम अनुसूची में अर्हता के नाम में परिवर्तन के कारण और संशोधन करती है, अर्थात् :—

(क) उक्त प्रथम अनुसूची में ''दीन दयाल उपाध्याय गोरखपुर विश्वविद्यालय/गोरखपुर विश्वविद्यालय, उत्तर प्रदेश'' के सामने 'मान्यताप्राप्त चिकित्सा अर्हता [इसके बाद कालम (2) के रूप में सन्दर्भित] शीर्ष के अंतर्गत अंतिम प्रविष्टि तथा उससे सम्बधित प्रविष्टि के बाद 'पंजीकरण के लिये सक्षिप्त रूप' [इसके बाद कालम (3) के रूप में संदर्भित] शीर्षक के तहत निम्नलिखित को अंतर्विष्ट किया जाएगा, अर्थात् :—

(2)	(3)
मास्टर ऑफ सर्जरी (नेत्र रोग विज्ञान)	एम.एस. (नेत्र रोग विज्ञान) (यह 1981 में या उसके बाद बी.आर.डी. में मेडिकल कॉलेज, गोरखपुर में प्रशिक्षित किए जा रहे छात्रों के संबंध में डॉ. दीन दयाल उपाध्याय गोरखपुर विश्वविद्यालय/ गोरखपुर विश्वविद्यालय, उत्तर प्रदेश द्वारा स्वीकृत किए जाने पर मान्यताप्राप्त चिकित्सा अर्हता होगी) ।

सभी के लिए नोट: 1. किसी स्नातकोत्तर पाठ्यक्रम को इस प्रकार प्रदत्त मान्यता अधिकतम 5 वर्ष की अवधि के लिए होगी और उसके बाद उसका नवीकरण करना होगा ।

2. उप-खण्ड 4 में यथापेक्षित समय पर मान्यता का नवीकरण न होने पर संबंधित स्नातकोत्तर पाठ्यक्रम में दाखिला रुक जाएगा ।

[सं. यू. 12012/54/2013-एमई (पी-II)]

अनिता त्रिपाठी, अवर सचिव

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health and Family Welfare)

New Delhi, the 11th September, 2013

S.O. 49.—In exercise of the powers conferred by sub-section (2) of the Section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, due to change of nomenclature of the qualification namely :—

In the said Schedule—

(a) against "Deen Dayal Upadhyaya Gorakhpur University/Gorakhpur University, Uttar Pradesh" under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)], after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—

(2)	(3)
"Master of Surgery (Ophthalmology)"	MS (Ophthalmology) (This shall be a recognized medical qualification when granted by Deen Dayal Upadhyaya Gorakhpur University/Gorakhpur University, Uttar Pradesh in respect of students being trained at B.R.D. Medical College, Gorakhpur on or after, 1981.

Note to all :
1. The recognition so granted to a Postgraduate Course shall be for a maximum period of 5 years, upon which it shall have to be renewed.
2. Failure to seek timely renewel of recognition as required in sub-clause 4 shall invariably result in stoppage of admission to the concerned Postgraduate Course.

[No. U. 12012/54/2013-ME (P-II]

ANITA TRIPATHI, Under Secy.

नई दिल्ली, 9 जुलाई, 2014

का.आ. 50.—केन्द्रीय सरकार भारतीय चिकित्सा परिषद अधिनियम, 1956 (1956 का 102) की धारा 11 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय चिकित्सा परिषद से परामर्श करने के पश्चात्, एतद्द्वारा संबद्ध करने वाले विश्वविद्यालय में बदलाव के कारण उक्त अधिनियम की पहली अनुसूची में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त प्रथम अनुसूची में :—

(क) ''महाराष्ट्र स्वास्थ्य एवं विज्ञान महाविद्यालय, नासिक, महाराष्ट्र'' के सामने 'मान्यताप्राप्त चिकित्सा अर्हता' [अब के बाद स्तंभ (2) के रूप में संदर्भित] के अंतर्गत अंतिम प्रविष्टि और उससे संबंधित प्रविष्टि के बाद 'पंजीकरण के लिये संपेक्षण' [अब के बाद स्तंभ (3) के रूप में संदर्भित] के अंतर्गत निम्नलिखित अंत:स्थापित किया जाएगा, अर्थात् :—

(2)	(3)
"डॉक्टर ऑफ मेडीसन (फिजियोलॉजी)"	एमडी (फिजियोलॉजी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह डॉ. शंकर राव चौहान सरकारी चिकित्सा महाविद्यालय, नांदेड़, महाराष्ट्र में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में महाराष्ट्र स्वास्थ्य एवं विज्ञान विश्वविद्यालय, नासिक, महाराष्ट्र द्वारा 2013 में अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ मेडीसन/ मास्टर ऑफ सर्जरी (एनोटोमी)"	एमडी/एमएस (एनाटोमी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह सरकारी चिकित्सा महाविद्यालय, लातूर, महाराष्ट्र में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में महाराष्ट्र स्वास्थ्य एवं विज्ञान विश्वविद्यालय, नासिक, महाराष्ट्र द्वारा 2013 में अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ मेडीसन/ मास्टर ऑफ सर्जरी (आब्सटेट्रिक्स व गायनोकोलॉजी)"	एमडी/एमएस (ओबीजी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह सरकारी चिकित्सा महाविद्यालय, लातूर, महाराष्ट्र में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में महाराष्ट्र स्वास्थ्य एवं विज्ञान विश्वविद्यालय, नासिक, महाराष्ट्र द्वारा 2013 में अथवा उसके पश्चात प्रदान की गई हो)।
"आब्सटेट्रिक्स व गायनोकोलॉजी में डिप्लोमा"	डीजीओ (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह सरकारी चिकित्सा महाविद्यालय, लातूर, महाराष्ट्र में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में महाराष्ट्र स्वास्थ्य एवं विज्ञान विश्वविद्यालय, नासिक, महाराष्ट्र द्वारा 2013 में अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ मेडिसीन/ (फॉरेंसिक मेडिसीन)"	एमडी (फॉरेंसिक मेडिसीन) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब सरकारी चिकित्सा महाविद्यालय, लातूर, महाराष्ट्र में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में महाराष्ट्र स्वास्थ्य एवं विज्ञान विश्वविद्यालय, नासिक, महाराष्ट्र द्वारा 2013 में अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ मेडिसीन/ (फिजियोलॉजी)"	एमडी (फिजियोलॉजी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी जब सरकारी चिकित्सा महाविद्यालय, लातूर, महाराष्ट्र में प्रशिक्षित किए जा

रहे विद्यार्थियों के संबंध में महाराष्ट्र स्वास्थ्य एवं विज्ञान विश्वविद्यालय, नासिक, महाराष्ट्र द्वारा 2013 में अथवा उसके पश्चात प्रदान की गई हो)।

(ख) "स्वामी विवेकानंद सुभारती महाविद्यालय, मेरठ, उत्तर प्रदेश" के सामने शीर्षक 'मान्यताप्राप्त चिकित्सा अर्हता' [अब के बाद स्तंभ (2) के रूप में संदर्भित] के अंतर्गत अंतिम प्रविष्टि और उससे संबंधित प्रविष्टि के बाद शीर्षक 'पंजीकरण के लिये संपेक्षण' [अब के बाद स्तंभ (3) के रूप में संदर्भित] के अंतर्गत निम्नलिखित अंत:स्थापित किया जाएगा, अर्थात् :—

(2)	(3)
"मास्टर ऑफ सर्जरी (ओटोरिहिनोलरिंगोलॉजी)"	एमएस (ईएनटी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह सुभारती चिकित्सा महाविद्यालय, मेरठ, उत्तर प्रदेश में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में स्वामी विवेकानंद सुभारती विश्वविद्यालय, मेरठ, उत्तर प्रदेश द्वारा 2013 में अथवा उसके पश्चात प्रदान की गई हो)।
"मास्टर ऑफ सर्जरी (ओफथोमोलॉजी)"	एमएस (ओफथोमोलॉजी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह सुभारती चिकित्सा महाविद्यालय, मेरठ, उत्तर प्रदेश में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में स्वामी विवेकानंद सुभारती विश्वविद्यालय, मेरठ, उत्तर प्रदेश द्वारा 2013 में अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ मेडिसीन (जनरल मेडिसीन)"	एमडी (जनरल मेडिसीन) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह सुभारती चिकित्सा महाविद्यालय, मेरठ, उत्तर प्रदेश में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में स्वामी विवेकानंद सुभारती विश्वविद्यालय, मेरठ, उत्तर प्रदेश द्वारा 2013 में अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ मेडिसीन (डर्माटोलॉजी, वेनरोलॉजी व लेप्रसी/स्किन व वेनरोलॉजी, डर्माटोलॉजी)"	एमडी (डीवीएल/स्किन व वीडी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह सुभारती चिकित्सा महाविद्यालय, मेरठ, उत्तर प्रदेश में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में स्वामी विवेकानंद सुभारती विश्वविद्यालय, मेरठ, उत्तर प्रदेश द्वारा 2013 में अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ मेडिसीन (पेडियाट्रिक्स)"	एमडी (पेडियाट्रिक्स) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह सुभारती चिकित्सा महाविद्यालय, मेरठ, उत्तर प्रदेश में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में स्वामी विवेकानंद सुभारती विश्वविद्यालय, मेरठ, उत्तर प्रदेश द्वारा 2013 में अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ मेडिसीन (एनिस्थिसिया)"	एमडी (एनिस्थिसिया) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह सुभारती चिकित्सा महाविद्यालय, मेरठ, उत्तर प्रदेश में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में स्वामी विवेकानंद सुभारती विश्वविद्यालय, मेरठ, उत्तर प्रदेश द्वारा 2013 में अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ मेडिसीन (साइकेट्री)"	एमडी (साइकेट्री) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह सुभारती चिकित्सा महाविद्यालय, मेरठ, उत्तर प्रदेश में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में स्वामी विवेकानंद सुभारती विश्वविद्यालय, मेरठ, उत्तर प्रदेश द्वारा 2013 में अथवा उसके पश्चात प्रदान की गई हो)।
"डॉक्टर ऑफ मेडिसीन/ मास्टर ऑफ सर्जरी (एनाटॉमी)"	एमडी/एमएस (एनाटॉमी) (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह सुभारती चिकित्सा महाविद्यालय, मेरठ, उत्तर प्रदेश में प्रशिक्षित किए जा रहे विद्यार्थियों के संबंध में स्वामी विवेकानंद सुभारती विश्वविद्यालय, मेरठ, उत्तर प्रदेश द्वारा 2013 में अथवा उसके पश्चात प्रदान की गई हो)।

सभी के लिए टिप्पणी : 1. स्नातकोत्तर पाठ्यक्रम के लिए स्वीकृत मान्यता 5 वर्ष की अधिकतम अवधि के लिए होगी जिसके बाद इसका नवीकरण किया जाएगा ।

2. मान्यता के 'नवीकरण' के प्रक्रिया मान्यता प्रदान करने के लिए लागू शर्त के अनुसार होगी ।

3. उप-खण्ड 4 में अपेक्षित अनुसार मान्यता को समय पर नवीकरण नहीं करवाने के फलस्वरूप संबंधित स्नातकोत्तर पाठ्यक्रम में निरपवाद रूप से दाखिला बंद हो जाएगा ।

[सं. यू. 12012/710/2014-एमई (पी-II)]
देवानंद पी. वेठे, अवर सचिव

New Delhi, the 9th July, 2014

S.O. 50.—In exercise of the powers conferred by sub-section (2) of the section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely :—

In the said Schedule—

(a) against "Maharashtra University of Health Sciences, Nashik, Maharashtra" under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)] and after the last entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—

(2)	(3)
"Doctor of Medicine (Physiology)"	MD (Physiology) (This shall be a recognized medical qualification when granted by Maharashtra University of Health Sciences, Nashik, Maharashtra in respect of students being trained at Dr. Shankarrao Chavan Govt. Medical College, Nanded, Maharashtra on or after 2013).
"Doctor of Medicine/ Master of Surgery (Anatomy)"	MD/MS (Anatomy) (This shall be a recognized medical qualification when granted by Maharashtra University of Health Sciences, Nashik, Maharashtra in respect of students being trained at Govt. Medical College, Latur, Maharashtra on or after 2013).
"Doctor of Medicine/ Master of Surgery (Obstetrics & Gynaecology"	MD/MS (OBG) (This shall be a recognized medical qualification when granted by Maharashtra University of Health Sciences, Nashik, Maharashtra in respect of students being trained at Govt. Medical College, Latur, Maharashtra on or after 2013).
"Diploma in Obstetrics & Gynaecology"	DGO (This shall be a recognized medical qualification when granted by Maharashtra University of Health Sciences, Nashik, Maharashtra in respect of students being trained at Govt. Medical College, Latur, Maharashtra on or after 2013).
"Doctor of Medicine (Forensic Medicine)"	MD (Forensic Medicine) (This shall be a recognized medical qualification when granted by Maharashtra University of Health Sciences, Nashik, Maharashtra in respect of students being trained at Govt. Medical College, Latur, Maharashtra on or after 2013).
"Doctor of Medicine (Physiology)"	MD (Physiology) (This shall be a recognized medical qualification when granted by Maharashtra University of Health Sciences, Nashik, Maharashtra in respect of students being trained at Govt. Medical College, Latur, Maharashtra on or after 2013).

(b) against "Swami Vivekanand Subharti University, Meerut, Uttar Pradesh" under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)] and after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—

"Master of Surgery (Otorhinolaryngology)"	MS (ENT) (This shall be a recognized medical qualification when

	granted by Swami Vivekanand Subharti University, Meerut, Uttar Pradesh in respect of students being trained at Subharti Medical College, Meerut, Uttar Pradesh on or after 2013).
"Master of Surgery (Ophthalmology)"	MS (Ophthalmology) (This shall be a recognized medical qualification when granted by Swami Vivekanand Subharti University, Meerut, Uttar Pradesh in respect of students being trained at Subharti Medical College, Meerut, Uttar Pradesh on or after 2013).
"Doctor of Medicine (General Medicine)"	MD (General Medicine) (This shall be a recognized medical qualification when granted by Swami Vivekanand Subharti University, Meerut, Uttar Pradesh in respect of students being trained at Subharti Medical College, Meerut, Uttar Pradesh on or after 2013).
"Doctor of Medicine (Dermatology, Venerology & Leprosy/Skin & Venerology, Dermatology)"	MD (DVL/Skin & VD) (This shall be a recognized medical qualification when granted by Swami Vivekanand Subharti University, Meerut, Uttar Pradesh in respect of students being trained at Subharti Medical College, Meerut, Uttar Pradesh on or after 2013).
"Doctor of Medicine (Paediatrics)"	MD (Paediatrics) (This shall be a recognized medical qualification when granted by Swami Vivekanand Subharti University, Meerut, Uttar Pradesh in respect of students being trained at Subharti Medical College, Meerut, Uttar Pradesh on or after 2013).
"Doctor of Medicine (Anaesthesia)"	MD (Anaesthesia) (This shall be a recognized medical qualification when granted by Swami Vivekanand Subharti University, Meerut, Uttar Pradesh in respect of students being trained at Subharti Medical College, Meerut, Uttar Pradesh on or after 2013).
"Doctor of Medicine (Psychitry)"	MD (Psychitry) (This shall be a recognized medical qualification when granted by Swami Vivekanand Subharti University, Meerut, Uttar Pradesh in respect of students being trained at Subharti Medical College, Meerut, Uttar Pradesh on or after 2013).
"Doctor of Medicine/ Master of Surgery (Anatomy)"	MD/MS (Anatomy) (This shall be a recognized medical qualification when granted by Swami Vivekanand Subharti University, Meerut, Uttar Pradesh in respect of students being trained at Subharti Medical College, Meerut, Uttar Pradesh on or after 2013).

Note to all :

1. The recognition so granted to a Postgraduate Course shall be for a maximum period of 5 years, upon which it shall have to be renewed.
2. The procedure for 'Renewal' of recognition shall be same as applicable for the award of recognition.
3. Failure to seek timely renewel of recognition as required in sub-clause 4 shall invariably result in stoppage of admission to the concerned Postgraduate Course.

[No. U. 12012/710/2014-ME (P-II)]

DEWANAND P. WETHE, Under Secy.

नई दिल्ली, 15 जुलाई, 2014

का.आ. 51.—केन्द्रीय सरकार भारतीय चिकित्सा परिषद अधिनियम, 1956 (1956 का 102) की धारा 11 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय चिकित्सा परिषद से परामर्श करने के बाद, एतद्द्वारा उक्त अधिनियम की पहली अनुसूची में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त पहली अनुसूची में ''तमिलनाडु डॉ. एमजीआर चिकित्सा विश्वविद्यालय, चेन्नई, तमिलनाडु'' के सामने शीर्षक 'मान्यताप्राप्त चिकित्सा अर्हता' [इसके बाद कॉलम (2) के रूप में संदर्भित] के अंतर्गत अंतिम प्रविष्टि और उससे संबंधित प्रविष्टि के बाद शीर्षक 'पंजीकरण के लिये संपेक्षण' [इसके बाद कॉलम (3) के रूप में संदर्भित] के अंतर्गत निम्नलिखित अंत:स्थापित किया जाएगा, अर्थात् :—

(2)	(3)
"बैचलर ऑफ मेडिसीन और बैचलर ऑफ सर्जरी"	एमबीबीएस (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह करपगा विनयागा चिकित्सा विज्ञान संस्थान, पदुरंथगम तालुक, तमिलनाडु में प्रशिक्षित किए जा रहे 100 एमबीबीएस विद्यार्थियों के संबंध में तमिलनाडु डॉ. एमजीआर चिकित्सा विश्वविद्यालय, चेन्नई, तमिलनाडु द्वारा फरवरी 2014 में अथवा उसके पश्चात प्रदान की गई हो)।

सभी के संबंध में नोट:1. एमबीबीएस डिग्री प्रदान करने के लिए किसी पूर्व-स्नातक पाठ्यक्रम के लिए प्रदत्त ऐसी मान्यता 5 वर्षों की अधिकतम अवधि के लिए होगी और जिसके उपरांत इसका नवीनीकरण करवाना पड़ेगा ।

2. मान्यता के नवीकरण की प्रक्रिया मान्यता प्रदान करने के लिए लागू किए जाने के समान होगी ।

3. पूर्व उप-खण्ड (क) में अपेक्षित अनुसार मान्यता को समय पर नवीकरण नहीं कराने के फलस्वरूप संबंधित उक्त कॉलेज में एमबीबीएस के पूर्व-स्नातक पाठ्यक्रम में निरपवाद रूप से दाखिला बंद हो जाएगा ।

[सं. यू. 12012/553/2014-एमई (पी-II)]

देवानंद पी. वेठे, अवर सचिव

New Delhi, the 15th July, 2014

S.O. 51.—In exercise of the powers conferred by sub-section (2) of the section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act, namely :—

In the said First Schedule after "The Tamilnadu Dr. M.G.R. Medical University, Chennai, Tamilnadu" and under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)] and after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—

(2)	(3)
"Bachelor of Medicine and Bachelor of Surgery"	M.B.B.S. (This shall be a recognized medical qualification when granted by The Tamilnadu Dr. M.G.R. Medical University, Chennai, Tamilnadu in respect of 100 MBBS students being trained at Karpaga Vinayaga Institute of Medical Sciences, Maduranthagam Taluk, Tamilnadu on or after, February, 2014).

Note to all : 1. The recognition so granted to an undergraduate Course for award of MBBS degree shall be for a maximum period of 5 years, upon which it shall have to be renewed.

2. The procedure for 'Renewal' of recognition shall be same as applicable for the award of recognition.

3. Failure to seek timely renewel of recognition as required in sub-clause (a) supra shall invariably result in stoppage of admission to the concerned undergraduate Course.

[No. U. 12012/553/2014-ME (P-II)]

DEWANAND P. WETHE, Under Secy.

नई दिल्ली, 30 जुलाई, 2014

का.आ. 52.—केन्द्रीय सरकार भारतीय चिकित्सा परिषद अधिनियम, 1956 (1956 का 102) की धारा 11 की उप-धारा (2) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए भारतीय चिकित्सा परिषद से परामर्श करने के बाद, एतद्द्वारा उक्त अधिनियम की पहली अनुसूची में निम्नलिखित और संशोधन करती है, अर्थात् :—

उक्त पहली अनुसूची में ''डॉ. एनटीआर स्वास्थ्य विज्ञान विश्वविद्यालय, विजयवाड़ा'' के सामने शीर्षक 'मान्यताप्राप्त चिकित्सा अर्हता [इसके बाद कॉलम (2) के रूप में संदर्भित] के अंतर्गत अंतिम प्रविष्टि और उससे संबंधित प्रविष्टि के बाद शीर्षक 'पंजीकरण के लिये संपेक्षण' [इसके बाद कॉलम (3) के रूप में संदर्भित] के अंतर्गत निम्नलिखित अंत:स्थापित किया जाएगा, अर्थात् :—

(2)	(3)
"बैचलर ऑफ मेडिसीन और बैचलर ऑफ सर्जरी"	एमबीबीएस (यह एक मान्यताप्राप्त चिकित्सा अर्हता होगी यदि यह अरूली सीताराम राजू चिकित्सा विज्ञान अकादमी, इलुरू, आंध्र प्रदेश में प्रशिक्षित किए जा रहे एमबीबीएस विद्यार्थियों जिनकी संख्या 100 से बढ़ाकर 150 कर दी गई है, के संबंध में डॉ. एनटीआर स्वास्थ्य विज्ञान विश्वविद्यालय, विजयवाड़ा द्वारा फरवरी 2014 में अथवा उसके पश्चात प्रदान की गई हो)।

सभी के संबंध में नोट: 1. एमबीबीएस डिग्री प्रदान करने के लिए किसी पूर्व-स्नातक पाठ्यक्रम के लिए प्रदत्त ऐसी मान्यता 5 वर्षों की अधिकतम अवधि के लिए होगी और जिसके उपरांत इसका नवीनीकरण करवाना पड़ेगा ।

2. मान्यता के नवीकरण की प्रक्रिया मान्यता प्रदान करने के लिए लागू किए जाने के समान होगी ।

3. पूर्व उप-खण्ड (क) में अपेक्षित अनुसार मान्यता को समय पर नवीकरण नहीं कराने के फलस्वरूप संबंधित उक्त कॉलेज में एमबीबीएस के पूर्व-स्नातक पाठ्यक्रम में निरपवाद रूप से दाखिला बंद हो जाएगा ।

[सं. यू. 12012/550/2014-एमई (पी-II)]

देवानंद पी. वेठे, अवर सचिव

New Delhi, the 30th July, 2014

S.O. 52.—In exercise of the powers conferred by sub-section (2) of the section 11 of the Indian Medical Council Act, 1956 (102 of 1956), the Central Government, after consulting the Medical Council of India, hereby makes the following further amendments in the First Schedule to the said Act.

In the said First Schedule after "Dr. NTR University of Health Sciences, Vijayawada" and under the heading 'Recognized Medical Qualification' [hereinafter referred to as column (2)] and after the last entry and entry relating thereto under the heading 'Abbreviation for Registration' [hereinafter referred to as column (3)], the following shall be inserted, namely :—

(2)	(3)
"Bachelor of Medicine and Bachelor of Surgery"	MBBS (This shall be a recognized medical qualification when granted by Dr. NTR University of Health Sciences, Vijayawada in respect of students being trained at Alluri Sitarama Raju Academy of Medical Sciences, Eluru, Andhra Pradesh against the increased intake from 100 to 150 MBBS students on or after, February, 2014).

Note to all : 1. The recognition so granted to a undergraduate Course for award of MBBS degree shall be for a maximum period of 5 years, upon which it shall have to be renewed.

2. The procedure for 'Renewal' of recognition shall be same as applicable for the award of recognition.

3. Failure to seek timely renewel of recognition as required in sub-clause (a) supra shall invariably result in stoppage of admission to the concerned undergraduate Course of MBBS at the said college.

[No. U. 12012/550/2014-ME (P-II)]

DEWANAND P. WETHE, Under Secy.

उपभोक्ता मामले, खाद्य और सार्वजनिक वितरण मंत्रालय

(उपभोक्ता मामले विभाग)

भारतीय मानक ब्यूरो

नई दिल्ली, 26 दिसम्बर, 2014

का.आ. 53.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम 1988 के विनियम 4 के उपविनियम 5 के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिनके विवरण नीचे अनुसूची में दिए गए हैं, को लाइसेंस प्रदान किए गए हैं :–

अनुसूची

क्र. सं.	लाइसेंस संख्या	स्वीकृति करने की तिथि वर्ष/माह	लाइसेंसधारी का नाम एवं पता	भारतीय मानक का शीर्षक	भामा सं.	भाग	अनु	वर्ष
1	2	3	4	5	6	7	8	9
1.	2936471	12 नवम्बर, 2014	मैसर्स आर.के. पोलीमर्स प्लॉट नं. जी–1097, रोड 1सी, मोन्जीनीस बेकरी के सामने, कीशान गेट, मेटोडा, तालुका लोधीका, जिला राजकोट, गुजरात–360 003	निमज्जीय पम्पसेट की विशिष्टि	8034	0	0	2002
2.	2938172	14 नवम्बर, 2014	मैसर्स अेडलर ईलेक्ट्रोनिक्स प्रा. लि., प्लॉट नं. जी–1935/4+ 5/3, अलमाइटी गेट, लोधीका जीआईडीसी, कालावड रोड, मेटोडा, जिला राजकोट, गुजरात–360 021	250 वोल्ट तक की रेटित वोल्टता वाले और 16 एम्पीयर तक की रेटित करंट वाले प्लग और सॉकेट निकास की विशिष्टि	1293	0	0	2005
3.	2939477	18 नवम्बर, 2014	मैसर्स आशी इंजीनियरिंग वर्क्स दर्शन पार्क, राजेश मशीन टुल्स के सामने, वेरावल लोधीका जीआईडीसी, (शापर), तालुका कोटडा सांगनी, जिला राजकोट, गुजरात–360 024	अग्नि होज प्रदाय युगमन शाखा पाईप नोजल और नोजल पान की विशिष्टि	903	0	0	1993
4.	2939578	18 नवम्बर, 2014	मैसर्स क्रिष्ना एन्टरप्राइज मेइन बाजार, हनुमान चौक, जाम – कल्यानपुर, जिला जामनगर, गुजरात–361 320	पैकेजबन्द पेय जल (पैकेजबन्द प्राकृतिक मिनरल जल के अलावा)	14543	0	0	2004
5.	2940765	19 नवम्बर, 2014	मैसर्स आहिर बेवरेजीस वार्ड नं. डीसी 2, प्लॉट नं. 244, गुरूकुल के पास, तालुका गांधीधाम जिला कच्छ, गुजरात–370 201	पैकेजबन्द पेय जल (पैकेजबन्द प्राकृतिक मिनरल जल के अलावा)	14543	0	0	2004

(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
6.	2940866	19 नवम्बर, 2014	मैसर्स केसर पैकेजड ड्रिंकिंग वॉटर, C/o खोडीयार ऑयल इंडस्ट्रीज, प्लॉट नं. 20-21, सर्वे नं. 269, गांव रीब, तालुका गोंडल, जिला राजकोट, गुजरात-360 311	पैकेजबन्द पेय जल (पैकेजबन्द प्राकृतिक मिनरल जल के अलावा)	14543	0	0	2004
7.	2941262	20 नवम्बर, 2014	मैसर्स अरिहन्त इंडस्ट्रीज सर्वे नं. 108पी, 109पी, 110पी एवं 214पी, सिहोर घांघली रोड़, घांघली, तालुका सिहोर, जिला भावनगर, गुजरात-364 002	तप्त बेल्लित मध्यम एवं उच्च तन्यता के संरचना इस्पात विशिष्टि	2062	0	0	2011
8.	2942163	21 नवम्बर, 2014	मैसर्स अेडलर इलेक्ट्रोनिक्स प्रा. लि., प्लॉट नं. जी-1935/4+ 5/3, अलमाइटी गेट, लोधीका जीआईडीसी, कालावड रोड, मेटोडा, जिला राजकोट, गुजरात-360 021	घरेलू और समान कार्यों के लिए स्विच विशिष्टि	3854	0	0	1997
9.	2943670	25 नवम्बर, 2014	मैसर्स क्रिश इलेक्ट्रिक कं. 12, आजी वसाहत, के. एस. डीजल के पीछे, दीनदयाल इंडस्ट्रीयल एस्टेट, 80 फिट रोड, राजकोट, गुजरात-360 003	खूले कुएं के लिए निमज्जय पम्पसेट - विशिष्टि	14420	0	0	1994
10.	2944268	28 नवम्बर, 2014	मैसर्स श्याम इंडस्ट्रीज सर्वे नम्बर 31, शिवम इंडस्ट्रीयल मेइन रोड, राज फाइबर के पास, जिला राजकोट, गुजरात-360 002	वाटरफ्लाई वाल्व, सामान्य कार्यों के लिए	13095	0	0	1991

[सं. केन्द्रीय प्रमाणन विभाग/13:11]

एस. चतुर्वेदी, वैज्ञानिक 'एफ' एवं प्रमुख

MINISTRY OF CONSUMER AFFAIRS, FOOD AND PUBLIC DISTRIBUTION

(Department of Consumer Affairs)

(BUREAU OF INDIAN STANDARDS)

New Delhi, the 26th December, 2014

S.O. 53.—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certificate) Regulations, 1988, the Bureau of Indian Standards, hereby notify the grant of licences particulars of which are given below in the following schedule :

SCHEDULE

Sl. No.	Licence No.	Grant Date	Name and address of the party	Title of the Standard	IS No.	Part	Sec.	Year
1	2	3	4	5	6	7	8	9
1.	2936471	12.11.2014	M/s. R. K. Polymers Plot No. G-1097, Road 1C, Opp. Monginis Bakery, Kishan Gate, Metoda, Taluka Lodhika, District-Rajkot, Gujarat-360024	Submersible Pumpsets-	8034	0	0	2002
2.	2938172	14.11.2014	M/s. Adler Electronics Pvt. Ltd. Plor No. G-1935/4 + 5/3, Almighty Gate, Lodhika GIDC, Kalavad Road, At Metoda, Distt. Rajkot, Gujarat-360021	Plugs and socket outlets of 250 volts and rated current up to 16 amperes	1293	0	0	2005
3.	2939477	18.11.2014	M/s. Aashi Engineering Works Darshan Park, Opp. Rajesh Machine Tools, At Veraval (Shaper), Distt. Rajkot, Gujarat-360024	Fire hose delivery coup-lings, branch pipe, nozzles and nozzle spanner	903	0	0	1993
4.	2939578	18.11.2014	M/s. Krishna Enterprise Main Bazar, Hanuman Chowk, At Jam - Kalyanpur, Distt. Jamnagar, Gujarat-361320	Packaged drinking water (other than packaged natural mineral water)	14543	0	0	2004
5.	2940765	19.11.2014	M/s. Ahir Beverages Ward No. DC-2, Plot No. 244, Near Gurukul, Taluka Gandhidam, Distt. Kachchh, Gujarat-370201	Packaged drinking water (other than packaged natural mineral water)	14543	0	0	2004
6.	2940866	19.11.2014	M/s. Kesar Packaged Drinking Water, C/o Khodiyar Oil Ind., Plot No. 20-21, Survey No. 269, At Village Rib, Taluka Gondal, Distt. Rajkot, Gujarat-360311	Packaged drinking water (other than packaged natural mineral water)	14543	0	0	2004
7.	2941262	20.11.2014	M/s. Arihant Industries, Survey No. 108P, 109P, 110P & 214P, Sihor Ghanghali Road, Ghanghali, Taluka Sihor, Distt. Bhavnagar, Gujarat-364002	Steel for general structural purposes-	2062	0	0	2011
8.	2942163	21.11.2014	M/s. Adler Electronics Pvt. Ltd. Plot No. G-1935/4 + 5/3, Almighty Gate, Lodhika GIDC, Kalavad Road, At Metoda, Distt. Rajkot, Gujarat-360021	Switches for domestic and similar purposes	3854	0	0	1997

1	2	3	4	5	6	7	8	9
9.	2943670	25.11.2014	M/s. Krish Electric Co. 12, Aji Vasahat, B/h K.S. Diesel, Dindayal Industrial Estate, 80 Feet Road, Rajkot, Gujarat-360003	Openwell Submersible Pumpsets-	14220	0	0	1994
10.	2944268	28.11.2014	M/s. Shyam Industries Survey No. 31, Shivam Industrial Main Road, Near Raj Fiber, Rajkot Gujarat-360002	Butterfly valves for general purposes	13095	0	0	1991

[No. CMD/13:11]

S. CHATURVEDI, Scientist 'F' & Head

नई दिल्ली, 26 दिसम्बर, 2014

का.आ. 54.—भारतीय मानक ब्यूरो (प्रमाणन) विनियम, 1988 के विनियम 4 के उप-विनियम (5) के अनुसरण में भारतीय मानक ब्यूरो एतद्द्वारा अधिसूचित करता है कि जिनके विवरण नीचे अनुसूची में दिए गए हैं, के लाइसेंस रद्द किए गए हैं :–

अनुसूची

क्रम संख्या	लाइसेंस संख्या	लाइसेंसधारी का नाम एवं पता	लाइसेंस के अंतर्गत वस्तु/प्रक्रम संबद्ध भारतीय मानक का शीर्षक	रद्दीकरण तिथि
(1)	(2)	(3)	(4)	(5)
1.	3779587	विशाल केमफुड इंडस्ट्रीज सर्वे नं. 228, 229, प्लॉट नं. 1, 2, 5, 6, 7, 8, ब्लॉक नं. I, गांव चुडवा, तालुका गांधीधाम, जिला कच्छ, गुजरात-370201	आयोडीनयुक्त नमक निर्वात वाष्पित आयोडीनयुक्त नमक और रिफाइंड आयोडीनयुक्त नमक	11 नवम्बर, 2014

[एस. केन्द्रीय प्रमाणन विभाग/13:11]

एस. चतुर्वेदी, वैज्ञानिक 'एफ' एवं प्रमुख

New Delhi, the 26th December, 2014

S.O. 54.—In pursuance of sub-regulation (5) of regulation 4 of the Bureau of Indian Standards (Certificate) Regulations, 1988 of the Bureau of Indian Standards, hereby notifies the grant of licences particulars of which are given below have cancelled/suspended with effect from the date indicated against each :

SCHEDULE

Sl. No.	Licence No. CM/L	Name and address of the Licensee	Article/Process with relevant Indian Standards covered by licence cancelled/suspension	Date of Cancellation
1.	3779587	M/s.Vishal Chemfood Industries Survey No. 228, 229, Plot No. 1, 2, 5, 6, 7, 8 Block No. I, Village Chudva, Taluka Gandhidham, Distt. : Kachchh, Gujarat-370201	Iodized Salt, Vacuum Evaporated Iodized Salt and Refined Iodized Salt - Specification	11.11.2014

[No. CMD/13:11]

S. CHATURVEDI, Scientist 'F' & Head

कोयला मंत्रालय

नई दिल्ली, 5 जनवरी, 2015

का.आ. 55.—केन्द्रीय सरकार ने कोयला धारक क्षेत्र (अर्जन और विकास) अधिनियम, 1957 (1957 का 20) (जिसे इसमें इसके पश्चात् उक्त अधिनियम कहा गया है) की धारा 4 की उप–धारा (1) के अधीन भारत सरकार में कोयला मंत्रालय के द्वारा जारी की गई अधिसूचना संख्या का. आ. 1187 तारीख 24 जून, 2013 जो भारत के राजपत्र के भाग II, खंड 3, उपखंड (ii), तारीख 29 जून, 2013 में प्रकाशित की गई थी, उस अधिसूचना सें संलग्न अनुसूची में विनिर्दिष्ट परिक्षेत्र की भूमि में जिसका माप 63.996 हेक्टर (लगभग) या 158.13 एकड़ (लगभग) है, कोयले का पूर्वेक्षण करने के अपने आशय की सूचना दी थी;

और केन्द्रीय सरकार का यह समाधान हो गया है कि इस अधिसूचना से संलग्न अनुसूची में विनिर्दिष्ट उक्त भूमि के एक भाग में कोयला अभिप्राप्त है ।

अतः, केन्द्रीय सरकार, उक्त अधिनियम की धारा 7 की उप–धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए इससे संलग्न अनुसूची में वर्णित 60.779 हेक्टर (लगभग) या 150.18 एकड़ (लगभग) माप की उक्त भूमि का अर्जन करने के अपने आशय की सूचना देती है:

टिप्पण 1 : इस अधिसूचना के अधीन आने वाले क्षेत्र के रेखांक संख्या एसईसीएल/बीएसपी/जीएम(पीएलजी)/भूमि/457, तारीख 16 सितम्बर, 2014 का निरीक्षण कलक्टर, जिला अनूपपुर (मध्य प्रदेश) के कार्यालय में या कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता–700001 के कार्यालय में या साउथ ईस्टर्न कोलफील्ड्स लिमिटेड (राजस्व अनुभाग), सीपत रोड, बिलासपुर –495006 (छत्तीसगढ़) के कार्यालय में किया जा सकता है।

टिप्पण 2 : उक्त अधिनियम की धारा 8 के उपबंधों की ओर ध्यान आकृष्ट किया जाता है, जिसमें निम्नलिखित उपबंध हैः–

अर्जन की बाबत् आपत्तियॉ.–

8 (1) कोई व्यक्ति जो किसी भूमि में जिसकी बाबत् धारा 7 की उप–धारा (1) के अधीन अधिसूचना निकाली गई है, हितबद्ध है, अधिसूचना के निकाले जाने से तीस दिन के भीतर सम्पूर्ण भूमि या उसके किसी भाग या ऐसी भूमि में या उस पर के किन्हीं अधिकारों का अर्जन किए जाने के बारे में आपत्ति कर सकेगा।

स्पष्टीकरण,–

(1) इस धारा के अन्तर्गत यह आपत्ति नहीं मानी जाएगी कि कोई व्यक्ति किसी भूमि में कोयला उत्पादन के लिए स्वयं खनन संक्रियाएं करना चाहता है और ऐसी संक्रियाएं केन्द्रीय सरकार या किसी अन्य व्यक्ति को नहीं करनी चाहिए।

(2) उप–धारा (1) के अधीन प्रत्येक आपत्ति सक्षम अधिकारी को लिखित रूप में की जाएगी और सक्षम अधिकारी, आपत्तिकर्ता को स्वयं सुने जाने, विधि व्यवसायी द्वारा सुनवाई का अवसर देगा और ऐसी सभी आपत्तियों को सुनने के पश्चात् और ऐसी अतिरिक्त जाँच, यदि कोई हो, करने के पश्चात, जो वह आवश्यक समझता है, वह या तो धारा 7 की उप–धारा (1) के अधीन अधिसूचित भूमि का या ऐसी भूमि में या उस पर के अधिकारों के संबंध में एक रिपोर्ट या ऐसी भूमि के विभिन्न टुकड़े या ऐसी भूमि में या उस पर के अधिकारों के संबंध में आपत्तियों पर अपनी सिफारिशों और उसके द्वारा की गई कार्यवाही के अभिलेख सहित विभिन्न रिपोर्ट केन्द्रीय सरकार को उसके विनिश्चय के लिए देगा।

(3) इस धारा के प्रयोजनों के लिए वह व्यक्ति किसी भूमि में हितबद्ध समझा जाएगा जो प्रतिकर में हित का दावा करने का हकदार होगा, यदि भूमि या किसी ऐसी भूमि में या उस पर के अधिकार इस अधिनियम के अधीन अर्जित कर लिए जाते है।

टिप्पण 3 : केन्द्रीय सरकार ने कोयला नियंत्रक, 1, काउंसिल हाउस स्ट्रीट, कोलकाता–700001 को उक्त अधिनियम की धारा 3 के अधीन अधिसूचना संख्या का. आ. 905, तारीख 20 मार्च, 1987 द्वारा भारत के राजपत्र के भाग II, खंड 3, उप–खंड (ii), तारीख 4 अप्रैल,1987 को सक्षम प्राधिकारी नियुक्त किया गया है।

अनुसूची

बिजुरी भूमिगत खान, हसदेव क्षेत्र,

जिला– अनूपपुर (मध्य प्रदेश)

(रेखांक संख्या एसईसीएल/बीएसपी/जीएम(पीएलजी)/भूमि/457, तारीख 16 सितम्बर, 2014)

भू–सतह अधिकारः

क्रम संख्या	ग्राम का नाम	पटवारी हल्का संख्या	बंदोबस्त संख्या	तहसील	जिला	क्षेत्र हेक्टर में	टिप्पणियां
1.	लोहसरा	43	929	कोतमा	अनूपपुर	49.733	भाग
2.	बिजुरी	42	734	कोतमा	अनूपपुर	4.978	भाग
3.	कोरजा	42	126	कोतमा	अनूपपुर	6.068	भाग
					कुल :– 60.779 हेक्टर (लगभग) या 150.18 एकड़ (लगभग)		

1. ग्राम लोहसरा (भाग) में अर्जित किए जाने वाले प्लॉट संख्याः–

156(भाग), 157, 158, 160 से 164, 187(भाग), 188(भाग), 189 से 198, 199(भाग), 200(भाग), 201, 202(भाग), 216(भाग), 217 से 221, 222(भाग), 223 से 225, 226(भाग), 227(भाग), 228(भाग), 228/1082(भाग), 230(भाग), 448/1091, 272(भाग), 273, 274(भाग), 275(भाग), 276 से 282, 441(भाग), 448/1091, 451 से 458, 460 से 470, 475 से 491, 492(भाग), 493(भाग), 495(भाग), 499, 500(भाग), 501(भाग), 502 से 511, 512(भाग), 540(भाग), 548(भाग), 549, 550(भाग), 551(भाग), 552 से 563, 565 से 571, 574, 590(भाग), 988(भाग),1030(भाग) ।

2. ग्राम बिजुरी (भाग) में अर्जित किए जाने वाले प्लॉट संख्याः–

5 से 14, 14/883, 15 से 27, 28(भाग) से 35(भाग), 36 से 39, 41(भाग), 48(भाग), 79(भाग) ।

3. ग्राम कोरजा (भाग) में अर्जित किए जाने वाले प्लॉट संख्याः–

63(भाग) से 66(भाग), 80(भाग) ।

सीमा वर्णन :

ब्लाक – I :

क–ख रेखा बिन्दु ''क'' से आरंभ होती है और ग्राम लोहसरा के प्लाट संख्या 158 के पश्चिमी सीमा, 156, 202, 200, 199, 216, 222, 226, 227, 228, 230, 1082, 226, 272, 274, 275, 495, 493, 492, 500, 501, 512, 548, 550, 551 से होकर, ग्राम बिजुरी–लोहसरा के भागतः सम्मिलित सीमा से होती हुई ग्राम बिजुरी–लोहसरा के सम्मिलित सीमा में बिन्दु ''ख'' पर मिलती है।

ख–ग रेखा बिन्दु ''ख'' से आरंभ होती है और ग्राम बिजुरी के प्लाट संख्या 5, 6, 7, 8, 9, 79 के उत्तरी सीमा, 79, 28, 29, 30, 31, 32, 33, 34, 35, 48 से होकर, 38, 39 के दक्षिणी सीमा, ग्राम बिजुरी–लोहसरा के भागतः सम्मिलित सीमा से गुजरती हुई ग्राम बिजुरी–लोहसरा के सम्मिलित सीमा में बिन्दु ''ग'' पर मिलती है।

ग–घ रेखा बिन्दु ''ग'' से आरंभ होती है और ग्राम लोहसरा के प्लाट संख्या 590 से होकर, 571 के पश्चिमी, 570, 569, 567, 574 के दक्षिणी, 574, 565, 564 के पश्चिमी, 561, 563, 475, 476 के दक्षिणी, 470, 451 के पूर्वी, 451, 455, 456, 457, 458, 460 के दक्षिणी सीमा से होती हुई बिन्दु ''घ'' पर मिलती है।

घ–क रेखा बिन्दु ''घ'' से आरंभ होती है और ग्राम लोहसरा के प्लाट संख्या 460 के पश्चिमी सीमा, 462 के दक्षिणी, 441 से होकर, 281, 282 के दक्षिणी, 187, 188 से होकर, 194, 164 के दक्षिणी, 164, 163, 161 के पश्चिमी, 160 के दक्षिणी, 157, 158 के पूर्वी, 158 के दक्षिणी सीमा से होती हुई आरंभिक बिन्दु ''क'' पर मिलती है।

ब्लाक – II :

ङ–च रेखा बिन्दु ''ङ'' से आरंभ होती है और ग्राम लोहसरा के प्लाट संख्या 988, 1030 से होती हुई बिन्दु ''च'' पर मिलती है।

च–छ रेखा बिन्दु ''च'' से आरंभ होती है और ग्राम कोरजा के प्लाट संख्या 65 के पूर्वी सीमा, 66 के उत्तरी और भागतः पूर्वी सीमा, 66 से होकर, 66 के दक्षिणी सीमा, 80, 65, 64, 63 से गुजरती हुई ग्राम कोरजा–लोहसरा के सम्मिलित सीमा में बिन्दु ''छ'' पर मिलती है।

छ–ज रेखा बिन्दु ''छ'' से आरंभ होती है और ग्राम कोरजा–लोहसरा के भागतः सम्मिलित सीमा से होती हुई बिन्दु ''ज'' पर मिलती है।

ज–ङ रेखा बिन्दु ''ज'' से आरंभ होती है और ग्राम लोहसरा के प्लाट संख्या 1030, 988 से होती हुई आरंभिक बिन्दु ''ङ'' पर मिलती है।

[फा.सं. 43015/02/2013–पीआरआईडब्ल्यू–I]

दोमिनिक डुंगडुंग, अवर सचिव

MINISTRY OF COAL

New Delhi, the 5th January, 2015

S.O. 55.—Whereas by the notification of the Government of India in the Ministry of Coal number S.O. 1187, dated the 24th June, 2013 issued under sub-section (1) of Section 4 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 (20 of 1957) (hereinafter referred to as the said Act) and published in the Gazette of India, Part-II, Section 3, Sub-section (ii), dated the 29th June, 2013, the Central Government gave notice of its intention to prospect for coal in 63.996 hectares (approximately) or 158.13 acres (approximately) of the lands in the locality specified in the Schedule annexed to that notification;

And whereas the Central Government is satisfied that coal is obtainable in a part of the said lands prescribed in the Schedule appended to this notification.

Now, therefore, in exercise of the powers conferred by sub-section (1) of Section 7 of the said Act, the Central Government hereby gives notice of its intention to acquire the land measuring 60.779 hectares (approximately) or 150.18 acres (approximately) as surface rights in or over the said lands as described in the Schedule appended hereto:

Note 1 : The plan bearing number SECL/BSP/GM(PLG)/LAND/ 457, dated the 16th September, 2014 of the area covered by this notification may be inspected in the office of the Collector, District Anuppur (Madhya Pradesh) or in the office of the Coal Controller, 1, Council House Street, Kolkata - 700001 or in the office of the South Eastern Coalfields Limited (Revenue Section), Seepat Road, Bilaspur- 495006 (Chhattisgarh).

Note 2 : Attention is hereby invited to the provisions of Section 8 of the said Act which provides as follows:-

Objection to Acquisition.-

8(1) Any person interested in any land in respect of which a notification under sub-section (1) of Section 7 has been issued, may, within thirty days of the issue of the notification, object to the acquisition of the whole or any part of the land or any rights in or over such land.

Explanation,-

(1) It shall not be an objection within the meaning of this section for any person to say that he himself desires to undertake mining operations in the land for the production of coal and that such operation should not be undertaken by the Central Government or by any other person.

(2) Every objection under sub-section (1) shall be made to the competent authority in writing, and the competent authority shall give the objector an opportunity of being heard either in person or by a legal practitioner and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, either make a report in respect of the land which has been notified under sub-section (1) of Section 7 or of rights in or over such land, or make different reports in respect of different parcels of such land or of rights in or over such land, to the Central Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of the Government.

(3) For the purposes of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land or any rights in or over such land were acquired under this Act.

Note 3 : The Coal Controller, 1, Council House Street, Kolkata-700001, has been appointed by the Central Government as the competent authority under section 3 of the said Act, vide notification number S.O. 905, dated the 20th March, 1987, published in Part II, Section 3, sub-section (ii) of the Gazette of India, dated the 4th April, 1987.

SCHEDULE

Bijuri U/G Mine, Hasdeo Area

District Anuppur (Madhya Pradesh)

(plan bearing number SECL/BSP/GM(PLG)/LAND/ 457, dated the 16th September, 2014)

Surface Rights:

Sl. No.	Name of Village	Patwari halka number	Settlement number	Tahsil	District	Area in hectares	Remarks
1.	Lohsara	43	929	Kotma	Anuppur	49.733	Part
2.	Bijuri	42	734	Kotma	Anuppur	4.978	Part
3.	Korja	42	126	Kotma	Anuppur	6.068	Part
			Total:- 60.779 hectares (approximately) or 150.18 acres (approximately)				

1. Plot numbers to be acquired in village Lohsara (Part):

156(P), 157, 158, 160 to 164, 187(P), 188(P), 189 to 198, 199(P), 200(P), 201, 202(P), 216(P), 217 to 221, 222(P), 223 to 225, 226(P), 227(P), 228(P), 228/1082(P), 230(P), 448/1091, 272(P), 273, 274(P), 275(P), 276 to 282, 441(P), 448/1091, 451 to 458, 460 to 470, 475 to 491, 492(P), 493(P), 495(P), 499, 500(P), 501(P), 502 to 511, 512(P), 540(P), 548(P), 549, 550(P), 551(P), 552 to 563, 565 to 571, 574, 590(P), 988(P), 1030(P).

2. Plot numbers to be acquired in village Bijuri (Part):

5 to 14, 14/883, 15 to 27, 28(P) to 35(P), 36 to 39, 41(P), 48(P), 79(P).

3. Plot numbers to be acquired in village Korja (Part):

63(P) to 66(P), 80(P).

Boundary Description:

Block-I:

A-B Line starts from point 'A' and passes in village Lohsara along western boundary of plot number 158, through 156, 202, 200, 199, 216, 222, 226, 227, 228, 230, 1082, 226, 272, 274, 275, 495, 493, 492, 500, 501, 512, 548, 550, 551, partly common boundary of villages Bijuri- Lohsara and meets at point 'B' on the common boundary of villages Bijuri-Lohsara.

B-C Line starts from point 'B' and passes in village Bijuri along northern boundary of plot number 5, 6, 7, 8, 9, 79, through 79, 28, 29, 30, 31, 32, 33, 34, 35, 48, along southern boundary of plot number 38, 39, partly common boundary of villages Bijuri- Lohsara and meets at point 'C' on the common boundary of villages Bijuri-Lohsara.

C-D Line starts from point 'C' and passes in village Lohsara through plot number 590, along western boundary of plot number 571, southern boundary of plot number 570, 569, 567, 574, western boundary of plot number 574, 565, 564, southern boundary of plot number 561, 563, 475, 476, eastern boundary of plot number 470, 451, southern boundary of plot number 451, 455, 456, 457, 458, 460 and meets at point 'D'.

D-A Line starts from point 'D' and passes in village Lohsara along western boundary of plot number 460, southern boundary of plot number 462, through 441, along southern boundary of plot number 281, 282, through 187, 188, along southern boundary of plot number 194, 164, western boundary of plot number 164, 163, 161, southern boundary of plot number 160, eastern boundary of plot number 157, 158, southern boundary of plot number 158 and meets at starting point 'A'.

Block-II:

E-F Line starts from point 'E' and passes in village Lohsara through plot number 988, 1030 and meets at point "F" on the common boundary of villages Korja-Lohsara.

F-G Line starts from point 'F' and passes in village Korja along eastern boundary of plot number 65, northern and partly eastern boundary of plot number 66, through 66, southern boundary of plot number 66, through 80, 65, 64, 63 and meets at point "G" on the common boundary of villages Korja-Lohsara.

G-H Line starts from point 'G' and passes along partly common boundary of villages Korja- Lohsara and meets at point "H".

H-E Line starts from point 'H' and passes in village Lohsara through plot number 1030, 988 and meets at starting point "E".

[F. No. 43015/02/2013-PRIW-I]

DOMINIC DUNGDUNG, Under Secy.

श्रम एवं रोजगार मंत्रालय

नई दिल्ली, 7 जनवरी, 2015

का.आ. 56.—केन्द्र सरकार, राजभाषा (संघ के शासकीय प्रयोजनों के लिए प्रयोग) नियम, 1976 (यथासंशोधित, 1987) के नियम 10 के उप-नियम (4) के अनुसरण में, श्रम और रोजगार मंत्रालय के प्रशासकीय नियंत्रणाधीन निम्नलिखित कार्यालयों को, जिनके 80 प्रतिशत से अधिक कर्मचारियों ने हिन्दी का कार्यसाधक ज्ञान प्राप्त कर लिया है, एतद्द्वारा अधिसूचित करती है :

(1) कर्मचारी राज्य बीमा निगम अस्पताल, पीन्या

(2) कर्मचारी राज्य बीमा निगम आदर्श चिकित्सालय एवं व्यावसायिक रोग केन्द्र, नंदानगर, इंदौर

(3) कर्मचारी राज्य बीमा निगम आदर्श अस्पताल, बद्दी, हिमाचल प्रदेश

[सं. ई-11017/1/2006-रा.भा.नी.]

ए. के. पण्डा, आर्थिक सलाहकार

MINISTRY OF LABOUR AND EMPLOYMENT

New Delhi, the 7th January, 2015

S.O. 56.—In pursuance of Sub-Rule (4) of Rule 10 of the Official Languages (Use for official purposes of the Union) Rule, 1976 (as amended, 1987) the Central Government hereby notifies following offices under the administrative control of the Ministry of Labour and Employment, more than 80% Staff whereof have acquired working knowledge of Hindi :

(1) ESIC Hospital, Peenya

(2) ESIC Model Hospital & Occupational Disease Center, Nandanagar, Indore

(3) ESIC Model Hospital, Baddi, HP

[No. E-11017/1/2006-RBN]

A. K. PANDA, Economic Advisor

नई दिल्ली, 7 जनवरी, 2015

का.आ. 57.—राष्ट्रपति, केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, अहमदाबाद के रिक्त पद हेतु लिंक अधिकारी के रूप में केन्द्रीय सरकार औद्योगिक अधिकरण-सह-श्रम न्यायालय, जयपुर, के पीठासीन अधिकारी श्री भरत पांडे को दिनांक 1.1.2015 से छ माह की अवधि तक अथवा नियमित पदधारण की नियुक्ति होने तक अथवा अगले आदेशों तक, इनमें से जो भी पहले हो, तब तक के लिए अतिरिक्त कार्यभार सोंपते हैं।

[सं. ए-11016/03/2009-सीएलएस-II]

सुशील कुमार त्रिपाठी, अवर सचिव

New Delhi, the 7th January, 2015

S.O. 57.—The President is pleased to entrust the additional charge of the post of Presiding Officer of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad to Shri Bharat Pandey, Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court, Jaipur with a period of six months w.e.f. 1.1.2015 or till the post is filled on regular basis or until further orders, whichever is the earliest.

[No. A-11016/03/2009-CLS.-II]

S. K. TRIPATHI, Under Secy.

नई दिल्ली, 30 दिसम्बर, 2014

का.आ. 58.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 42/1998) को प्रकाशित करती है जो केन्द्रीय सरकार को 30-12-2014 को प्राप्त हुआ था।

[सं. एल-20012/551/1997-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 30th December, 2014

S.O. 58.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 42/1998) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 30/12/2014.

[No. L-20012/551/1997-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO.1, DHANBAD

In the matter of reference U/S 10(1) (d) (2A) of I.D. Act, 1947

Reference No. 42 of 1998

Employer in relation to the management of Katras Project of M/S BCCL

AND

Their workman

Present : Sri R.K.Saran, Presiding Officer

Appearances:

For the Employers : Sri D.K.Verma, Advocate

For the Workman : Sri H.P.Gond, Advocate.

State : Jharkhand Industry : Coal

Dated 3/12/2014

AWARD

By order No.-L-20012/551/97 IR-(C-I), dated. 13/08/98 the Central Govt. in the Ministry of Labour has, in exercise of powers conferred by clause (d) of Sub –Section (1) and Sub-Section (2A) of Section 10 of the Industrial Disputes Act.1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Katras Project Area of M/S BCCL in dismissing Sri P.N. Srivastava, clerk (working as Cashier) Area Finance Department from the service of company w.e.f. 04.08.93 under clause 26.1.2 & 26.1.11 of the certified standing orders of the company is justified? If not, to what relief the concerned workman is entitled?"

2. The case is received from the Ministry of Labour on 01.09.1998. After receipt of reference, both parties are noticed, the Sponsoring Union/ workman files their written statement on 05.11.1998.The management also files written statement –cum- rejoinder on 24.02.2000. Thereafter rejoinder and documents by the workman.

3. The short point to be decided as to whether the dismissal of the workman for alleged manipulation of records and interpolation is justified or not.

4. In this case the enquiry conducted by the Enquiry Officer is ordered to be fair and proper.

5. The Charge is interpolation of cash Book from 31.7.90 to 17.06.1991, appears to be interpolated and scored through, and the allegation is the workman who was a clerk cum cashier, was committing mistake of temporary misappropriation of fund of the company. Such cash Book was not filed before this Tribunal for verification nor its authenticated photocopy is there in the domestic enquiry record.

6. The workman has accepted the order of this Tribunal as fair and proper of domestic enquiry, and not challenged the same in higher Court. But going through the records etc, this Tribunal finds that punishment awarded to the workman is quite disproportionate, taking into account of his fault.

7. Considering the facts and circumstances of this case, I hold that the action of the management of Katras Project Area of M/S BCCL in dismissing Sri P.N. Srivastava, clerk (working as Cashier) Area Finance Department from the service of company w.e.f. 04.08.93 under clause 26.1.2 & 26.1.11 of the certified standing orders of the company is not justified, Therefore this Tribunal orders that the date of dismissal of the workman be treated as its premature retirement and till that date, its legal dues be given.

This is my award

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2014

का.आ. 59.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 27/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 30-12-2014 को प्राप्त हुआ था।

[सं. एल-20012/272/2004-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 30th December, 2014

S.O. 59.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 30/12/2014.

[No. L-20012/272/2004-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D.Act.,1947

REFERENCE NO. 27 OF 2005

PARTIES : The Vice President,
Mine Mazdoor Union,
At & PO: Bhaga, Dhanbad

Vs.

General Manager,
P.B.Area of M/s BCCL,
PO: Kusunda, Dhanbad

Ministry's Order No L-20012/272/04-IR (C-I) dt. 24.03.2005

APPEARANCES :

On behalf of the Workman/Union : Mr. M. M. Khan, Ld. Adv.

On behalf of the Management : Mr. U. N. Lal, Ld. Adv.

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 28th Nov., 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10 (1) (d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No L-20012/272/04.IR (C-I) dt. 24.03.2005.

SCHEDULE

"Whether the action of the Management of Pootki Colliery M/s BCCL in dismissing Sri Shiv Prasad Bhuia from the services of the Company w.e.f. 24.05.2004 is for and justified? If not, to what relief is the concerned workman entitle."

On receipt of the Order No. L-20012/272/04.IR (C-I) dt. 24.03.2005 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No.27 of 2005 was registered on 26.04.2005 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own respective Ld.Counsels appeared in, and contested the case.

2. The case of workman Shiv Prasad Bhuia as sponsored by the Mine Mazdoor Union,Bhaga,Dhanbad ,is that he was a permanent employee as M/Loader of Pootkee Colliery of M/s BCCL.After returning from his second shift job on 19.10.2001,he fell ill and he was alone at his residence. Having seen him in precarious condition, his neighbour shifted him to his native village in Gaya. When treatment locally available did not improve his conditions, he was admitted to Gaya Hospital on 21.10.2001 for treatment .On improvement ,the workman informed of his sickness through his letter dt.6.11.2001 via under Certificate of Posting and further letters dtt.23.11.2001 and 30.01.2002.After his prolong treatment as attended by the physician Dr.S.Prasad,Civil Asstt.Surgeon, the workman could recover, and found physically fit for duty on 15.09.2003.When he with the Medical Certificate of his treatment from 21.1.2001 to 15.09.2003 and his fitness for duty returned to the colliery to take permission for joining his duty, the Project Offer instead of it, issued him the charge sheet dt.1/3.0.2003 for unauthorized proceeding on leave. Though the Postal Certificate and Medical Certificate submitted by the workman were received by the Office on 17.10.2003, the allegation that he did not submit it is not at all correct. During the period of his absence, there was no communication to the workman by the Management. He was chargesheeted while he was physically present fit for duty as declared by the aforesaid physician Doctor. No second show cause spoke of any proposed punishment as a consequence about which he was not in a position to speak for defence.The action of the Management in dismissing him in the facts and circumstances is not fair and proper. So the workman is entitled to full wage with all consequential benefits from the date of dismissal to that of his reinstatement.

No rejoinder filed on behalf of the workman.

3. On the other hand, challenging the maintainability of the reference in law and fact both, the contra case of the OP/Management with categorical denials is that Sri Shiv Prasad Bhuia,an employee of Pootkee Colliery, was chargesheeted for his unathutorised absence from his duty since 20.10.2001.After the domestic enquiry held into it in accordance with the principle of natural justice, the Enquiry Officer found him guilty under clause 26.1.1. of the Certified Standing orders of the Company. The workman was given full opportunity for his defence,but he never complained anything against the enquiry proceeding.Havng considered the three years past record of the workman's attendances ,i.e.,162,89 and 67 in the years 1999,2000 and 2001 respectively, the Management has issued him the dismissal order, as he was a habitual absentee. The dismissal of the workman for his habitual absentism is fully justified. The Management has sought a permission for the proof the charge against the workman, in case the enquiry is held unfair and improper by the Tribunal.

The OP/Management in the rejoinder has specially denied all the allegations of the workman.

FINDING WITH REASONS

4. In the instant reference, at the preliminary point, having considered the evidences of both the partes, the domestic enquiry was held in accordance with the principles of the natural justice as per the Order No.33 dt.30.10.13 of the Tribunal. It resulted in hearing the final arguments of both the parties on merits.

Mr. M. M. Khan, the Learned Counsel for the Union/ workman, has submitted that the workman, a permanent M/Loader of Pootkee Colliery,P.B.Area of M/s BCCL ,but due to his sudden illness after return from his duty on 19.10.2001, he was shifted by his neighbour to his native village Gaya where he was admitted in the Hospital at

Gaya on 21.10.2001 for better treatment. He was too precarious to inform of it to the Management. After improvement, he sent the information of his sickness through the UPC letters dtt..8.11.2001 and 23.1.2001 (the Xerox copies of UPC letters attached on the record for perusal); on his recovery, where he went to the colliery to join his duty on 15.09.2003,he was illegally chargesheeted and accordingly, was dismissed by the Management on 22.5.2004 for his absentism; and that he was punished with the harsh punishment of dismissal for it; thus the action of the Management in dismissing the workman is not fair and justified.

Whereas the contention of Mr. U.N. Lal, Ld. Advocate for the OP/Management, is that the workman had been a habitual absentee as in his past three years' attendances as well, and on the proof of the charge in the domestic enquiry, and after 2nd Show Cause Notice with the copy of the enquiry report to him (Ext.M.7)the Disciplinary Authority considered all the facts, and passed dismissal order dt.24.5.2004 as apparent from the documents of the Management (Ext.M.1 to 9);as such the dismissal order of the Management w.e.f. 24.6.2004 for the proved misconduct of his absentism under the Certified Standing Orders of the Company is just and proper.

On perusal of the materials available on the case record, the facts of the U.C.P. (Under Certificate of Posting) letters on 8.11.01 and 23.11.2011 sent by the workman appear to be palpably false, as there is no proof of it, rather his two undated applications to the Project Office of the Colliery which were received on 17.09.03 and 17.10.2003 (Extt.W.1 & 2= Ext.M.2 respectively) were firstly about his illness, treatment as well as for permission to let join his duty.

I find the previous meagre attendances of the workman on duty can not be a base for his first dismissal for his instant unauthorsed absence from his duty. The workman appears to have described his previous situation of his illness due to frequent fever for which he had got Medical treatment from Dr.S.Prasad at his native district Gaya.

The status of the workman as a M/Loader since 1998 is also an acknowledged fact. Consideration of past record of the workman appears to be a motivating factor while imposing the punishment of dismissal upon him.

Under these circumstances, the punishment of outright dismissal to workman Shiv Prasad Bhuia for a single misconduct of his absentism in his career appears to be highly shocking to the conscience; hence it is quite disproportionate to the nature of his unavoidable absentism misconduct. The Courts/Tribunal can interfere with punishment only when it is disproportionate to the misconduct or shocking to the conscience as held by the Hon'ble Supreme Court in the case of Jadish Singh Vs. Punjab Engineering College, 2009 LLR 752 (SC) .

As the dismissal punishment is liable to be set aside under the Sec.11 A of the Industrial Dispute Act, 1947, so the workman deserves the relief of reinstatement under the said provision of law.

In result, it is, in the terms of the Reference, hereby responded and accordingly awarded that the action of the Management of Pootki Colliery of M/s BCCL in dismissing Sri Shiv Prasd Bhuia from the services of the Company w.e.f. 24.5.2004 is absolutely unfair and unjustified. Hence, the workman concerned is entitled to reinstatement in his service but without back wages.

KISHORI RAM, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2014

का.आ. 60.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार ई.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 111/1992) को प्रकाशित करती है जो केन्द्रीय सरकार को 30-12-2014 को प्राप्त हुआ था।

[सं. एल-20012/233/1991-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 30th December, 2014

S.O. 60.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 111/1992) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. ECL and their workmen, received by the Central Government on 30/12/2014.

[No. L-20012/233/1991-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference: No 111/1992

Employer in relation to the management of Nirsa Area M/s ECL

AND

Their workmen

Present : Sri R. K. Saran, Presiding Officer.

Appearances:

For the Employers : Sri D. K. Verma, Advocate

For the Workman : None

State : Jharkhand Industry : Coal

Dated- 3/12/2014

AWARD

By order No. L-20012/233/1991 IR (C-1)) dated 29/09/1992, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of M/s ECL Nirsa Area in relation to their Badjna Colliery. In not regularizing S/Shri Shibu Rawani and 11 others (as per list) water Suppliers is justified? If not, to what relief the workman concerned are entitled?"

	Name	Father's Name	Vill	P.O.	Distt
1.	Sibu Rawani	Baku Rawani	Pratandih	Poddardih,	Dhanbad
2.	Balai Roy	Shri Hari Roy	Pratadih	Poddardih	Dhanbad
3.	Fatik Rawani	Sri Baku Rawani	Poddardh	Nirsa	Dhanbad
4.	Panu Gorai	Shri Shashi Gorai	Bhalkhuria,	Nirsa	Dhanbad
5.	Bideshi Gope,	Sri Malnu Gope	Gargara	Gobindpur	Dhanbad
6.	Kalipado Rawani	Sri Kinkar Rawani	Vandrapur	Nirsa	Dhanbad
7.	Samanto Gorai	Sri Amoro Gorai	Vandrapur	Nirsa	Dhanbad
8.	Dubas Gope,	Sri Satish Gope,	Jhilua	Jhilua	Dhanbad
9.	Ratan Rawani,	Sri Satish Rawani,	Pratapdih,	Podardih	Dhanbad
10.	Santosh Mahto	Shri Sova Mahto	Kandutha	Nirsa	Dhanbad
11.	Jagdish Yadav	Shri Ritu Yadav,	Dukhadpur	Panriya	Gaya
12.	Ruplal Rawani	Sri Gobind Rawani	Dhanbad,	Nirsa	Dhanbad

2. After receipt of the reference, both parties are noticed. But appearing for certain dates, none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence, No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2014

का.आ. 61.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 78/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-12-2014 को प्राप्त हुआ था।

[सं. एल-20012/334/1991-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 30th December, 2014

S.O. 61.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 78/1992) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. CCL and their workmen, received by the Central Government on 30/12/2014.

[No. L-20012/334/1991-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference: No 78/1992

Employer in relation to the management of Arra Colliery of M/s CCL

AND

Their workmen

Present : Sri R. K. Saran, Presiding Officer

Appearances:

For the Employers : None

For the Workman : None

State : Jharkhand Industry : Coal

Dated : 2/12/2014

AWARD

By order No. L-20012/334/1991-IR (C-1)) dated 28/08/1992, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of Arra Colliery of M/s CCL in terminating from service to Smt. Pyari Kamin, Ex-wagon Loader is justified? If not, to what relief she is entitled?"

2. After receipt of the reference, both parties are noticed. But appearing for certain dates, none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence, No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2014

का.आ. 62.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 120/1992) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-12-2014 को प्राप्त हुआ था।

[सं. एल-20012/333/1991-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 30th December, 2014

S.O. 62.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 120/1992) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. CCL and their workmen, received by the Central Government on 30/12/2014.

[No. L-20012/333/1991-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference: No 120/1992

Employer in relation to the management of Kuju Colliery of M/s. C.C. Ltd.

AND

Their workmen

Present : Sri R. K. Saran, Presiding Officer

Appearances:

For the Employers : None

For the Workman : None

State : Jharkhand Industry : Coal

Dated 2/12/2014

AWARD

By order No. L-20012/333/1991 IR (C-1)) dated 18/08/1992, the Central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub –section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"Whether the action of the management of Kuju Colliery of M/S CCL. At & P.O. Kuju, Dist. Hazaribagh in dismissing from service of Shri Raman Rajwar is justified? If not, to what relief the workman is entitled ?"

2. After receipt of the reference, both parties are noticed. But appearing for certain dates, none appears subsequently. Case remain pending. It is felt that the disputes between the parties have been resolved in the meantime. Hence, No Dispute Award is passed. Communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2014

का.आ. 63.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 32/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-12-2014 को प्राप्त हुआ था।

[सं. एल-20012/33/2013-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 30th December, 2014

S.O. 63.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 32/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 30/12/2014.

[No. L-20012/33/2013-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference: No 32/2013

Employer in relation to the management of Katrash Colliery of M/s. BCCL

AND

Their workmen

Present : Sri R. K. Saran, Presiding Officer

Appearances:

For the Employers : Sri D. K. Verma, Advocate

For the Workman : Sri M. Prasad, Advocate

State : Jharkhand Industry : Coal

Dated 20/11/2014

AWARD

By order No. L-20012/33/2013 IR-(CM-I), dated 22/08/2013 the Central Govt. in the Ministry of Labour has, in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, referred the following disputes for adjudication to this Tribunal :

SCHEDULE

"Whether the action of the management of Ramkanali Colliery of M/s. BCCL in dismissing Sri Kameshwar Nonia from the service of the company vide order dated 05.12.2007 is legal and justified? To what relief is the workman concerned entitled to?"

2. The case is received from the Ministry of Labour on 04.09.2013. After receipt of reference, both parties are noticed, the workman files their written statement on 31.01.2014. Thereafter the management also files written statement -cum- rejoinder on 16.05.2014. The management marked the document as M-1 to M-8 as well as the workman also marked the document as W-1 to W-5. The point involved in the reference is that the workman has been dismissed from his services on the ground of absenteeism.

3. During preliminary hearing it is revealed that the case is dismissal of workman for long absence on duty. But he has already out of service for 7 years. It is felt to give another chance to the workman to serve.

4. Considering the facts and circumstances of this case, I hold that he be taken into job as a fresh employee. But the workman be kept under probation for a period of one year and his performance report be given to the under signed. Therefore the question of back wages does not arise at all.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2014

का.आ. 64.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 31/2009) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-12-2014 को प्राप्त हुआ था।

[सं. एल-20012/27/2009-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 30th December, 2014

S.O. 64.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 31/2009) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 30/12/2014.

[No. L-20012/27/2009-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference: No 31/2009

Employer in relation to the management of Kustore Area of M/s. BCCL

AND

Their workmen

Present : Sri R. K. Saran, Presiding Officer

Appearances:

For the Employers : Sri D.K. Verma, Advocate

For the Workman : Sri S.C. Gour, Rep.

State : Jharkhand Industry : Coal

Dated 8/12/2014

AWARD

By order No. L-20012/27/2009 IR (CM-I) dated 30/04/2009, the central Government in the Ministry of Labour has, in exercise of the powers conferred by clause (d) of sub -section (I) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 referred the following dispute for adjudication to this Tribunal :

SCHEDULE

"(i) Whether the action of the management of Kustore Area of M/s. BCCL in not regularizing the services of Shri Manohar Bhar as Driver in Cat-V from April 1999 is justified and legal?" (ii) To what relief is the workman concerned entitled?

2. This Case is received from the Ministry of Labour on 28.0.2009. During the pendency of the case. The representative of workman submits that workman is not interested to contest the case. It is felt that the dispute between parties are resolved. Hence "No dispute" award is passed. communicate.

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2014

का.आ. 65.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 1, धनबाद के पंचाट (संदर्भ संख्या 07/2003) को प्रकाशित करती है, जो केन्द्रीय सरकार को 30-12-2014 को प्राप्त हुआ था।

[सं. एल-20012/179/2002-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 30th December, 2014

S.O. 65.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 07/2003) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 30/12/2014.

[No. L-20012/179/2002-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1, DHANBAD

In the matter of reference U/S 10 (1) (d) (2A) of I.D. Act, 1947

Reference: No. 07/2003

Employer in relation to the management of P.B. Area of M/s. BCCL

AND

Their workmen

Present : Sri R. K. Saran, Presiding Officer

Appearances:

For the Employers : Sri D.K. Verma, Advocate

For the Workman : Sri R.R. Ram, Rep.

State : Jharkhand Industry : Coal

Dated 4/12/2014

AWARD

By order No. L-20012/179/2002-IR-(C-I), dated, 10/12/2002 the Central Govt. in the Ministry of Labour has, in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act. 1947, referred the following disputes for adjudication to this Tribunal:

SCHEDULE

"Whether the action of the management of P.B. Area of M/s. BCCL in not regularizing Sri Rajendra Paswan as Dumper Driver/Operator is fair and justified? If not, to what relief is the concerned workman entitled and from what date?"

2. The case is received from the Ministry of Labour on 01.01.2003. After receipt of reference, both parties are noticed, The workman files their written statement on 17.01.2003, and the management also files their written statement on 18.06.2003. Both side adduce one witness each on their behalf. The workman document's marked as W-1 to W-4.

3. Short point to be decided in this reference is the workman concerned is to be regularized in the post of Dumper Driver/operator or not.

4. From Ext. W-2 it appears that the workman was ordered to work as Dumper operator. As per Ext.. W-3. the workman was ordered to under go probation for one year in the post of Driver (T) in category I . From another letter of the management it appears that the Deputy Chief personal manager of. P.B.Area vide Ext.-4 ordered for regularization of the workman Rajendra Paswan w.e.f. 06.01,1995 in the post of Dumper Driver category V.. It is also submitted by the management that the Dy. Personal manager had no power to pass order Ext. 4. But for that, the workman is not responsible nor he be deprived of his claim.

5. Considering the facts and circumstances of this case. 1 hold that the action of the management of P.B. Area of M/S BCCL in not regularizing Sri Rajendra Paswan as Dumper Driver/Operator is not fair and justified. Therefore the workman is to be regularized as Dumper Driver category V from 06.01.1995 with immediate effect accordingly prepare the seniority list.

This is my award.

R. K. SARAN, Presiding Officer

नई दिल्ली, 30 दिसम्बर, 2014

का.आ. 66.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सी.एम.पी.डी. आई. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 60/93 एवं 49/95) को प्रकाशित करती है जो केन्द्रीय सरकार को 30-12-2014 को प्राप्त हुआ था।

[सं. एल-20012/348/1992-आईआर (सी-I),
सं. एल-20012/151/1992-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 30th December, 2014

S.O. 66.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 60/93 & 49/95) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. CMPDI and their workmen, received by the Central Government on 30/12/2014.

[No. L-20012/348/1992-IR (C-I),
No. L-20012/151/1992-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT : Shri Kishori Ram, Presiding Officer.

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act,1947.

REFERENCE NO. 60 OF 1993

The General Secretary,
National Coal Workers Congress,
Anne Villa, Ranchi-834008
S/Shri Shami Alam and
Mozibul Haque Hussain (workmen)

(Ministry's Order No.L-20012/348/92-IR (Coal-I) dt.28.05.1993

WITH

REFERENCE NO. 49 OF 1995

For S/Shri Mozibul Haque Hussain and
Shami Alam (Workmen)

(Ministry's Order No. L-20012/151/92.IR (Coal-I) dt.23.03.1995

Vs.

MANAGEMENT OF CENTRAL PLANING & DESIGN INSTITUTE LTD., GONDWANA PLACE, KANKE ROAD, RANCHI-834008

APPEARANCES :

On behalf of the workmen/Union : Mr. C.S. Pathak, Rep. of the workmen

On behalf of the Management : Mr.B.K.Sinha, Management's Representatives

State : Jharkhand Industry : Mines

Dated, Dhanbad, the 28th Nov., 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10(1)(d) of the I.D. Act.,1947 has referred the following disputes to this Tribunal for adjudication vide their Order Nos. referred to above going paras under Reference heads as per the Schedules:

THE SCHEDULE OF REF. NO. 60 OF 1993

"Whether the action of the Management of M/s Central Mine Planning & Design Institute Ltd., Ranchi is justified in terminating the services of workmen S/Shri Shami Alam and Mozibul Haque Hussain with effect from 24.07.92 after employing them continuously as sweepers from 6.11.1989 and 5.5.1990 respectively without paying them notice pay in lieu of Notice of one month and retrenchment

compensation in violation of Section 25-F of the Industrial Disputes Act,1947 ? If not, to what relief the workmen are entitled ?'

THE SCHEDULE OF REF. NO. 49 OF 1995

"Whether the action of the Management of M/s Central Mine Planning & Design Institute Ltd., Ranchi is justified in not regularizing the services of S/Shri Mozibul Haque Hussain and Shami Alam as sweepers w.e.f. 5.5.90 and 6.11.89 respectively and not paying the wages of Cat. I as per NCWA-IV ? If not, to what relief the workmen are entitled and from what date?"

On receipt of the Order Nos. L-20012/348/92-IR (Coal-I) dt.28.05.1993 and L-20012/151/92-IR (Coal-I) dt.23.03.1995 of the above aforesaid mentioned two references from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Cases No.60 of 1993 and 49 of 1995 were registered on 30.06.93 and 30.03.93 respectively and accordingly orders to that effect were passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties concerned made their appearances through their own Representatives, filed their pleadings and photocopies of their documents, and contested the case.

2. Both the references are between the same parties for the same workmen concerning their respective schedules for heir illegal terminations and regularization respectively. So at the prayer of their workmen's Representatives later on the Ref.No.49/1995 was made analogous to the first Ref.No.60/93 as per the Oder No.62 dt.11.7.2001 of the Tribunal for their disposal together.

3. In the REFERENCE NO. 60/93 irrespective of unnecessary facts and rulings beyond the scope of the pleading, the case of the workmen Shami Alam and Mozibul Haque Hussain as sponsored by the National Coal Workers Congress concerned is that both of them have been employed by the Central Mine Planning & Design Institute Ltd.,Ranchi (hereinafter referred to as CMPDIL on the perennial and regular duties of Sweeping and cleaning of the floors of the office Building, ceilings, windows, doors, washing of toilets of the office buildings and Guest Houses etc. at its Gondwana Complex, Ranchi w.e.f. 6.11.1989 and 5.5.1990 respectively, in the first instance as contract Labour upto 31.3.1991, then as casuals from 1.4.1991, and thereafter as Casual Muster Roll Employees up to 24.7.1992 along with similar other workmen. The employment of contract Labour on sweeping and cleaning jobs is prohibited under Sec.10 of the Contract Labour (Regulation & Abolition)Act 1970.The job of cleaning etc is incidental to well being and tidy environment. In the instant case, the engagement of the workmen through a contractor is a fraud, as no contract labour could be legally engaged by the CMPDI on the job of cleaning and on or after 01.03.1977. So the CMPDI is the employer of the workmen. The jobs of all kinds of cleaning are performed by the regular/permanent sweepers in Category I. The Management's acts for employment of contract labours are nefarious, unfair labour practices and forced labour contrary to the Articles 14, 16, 21, 23 and 39(d) of the Constitution of India as well as against the National Coal Wage Agreement (NCWA). The NCWA is binding upon the CMPDIL too. In December, 1990, 23 workers including both the present workmen were employed through contractors for sweeping, but neither any of the contractors had any license under the mandatory provision of the Contract Labour (R & A) Act 1970 nor the CMPDI was registered as Principal Employer. So the alleged contractors were merely paper arrangements with a view to deprive the workmen of their entitled wages, benefits and service conditions of the sweepers in Cat.I.After 31.1.1990, there were neither any contractor nor any contract labour. Both the workmen are directly supervised by the Dy. Estate Manager and other officials. They were listed as casuals along with their similar workmen w.e.f. 01.04.1991 in the Attendance Register. The case of both the workmen is similar to that of other workmen S/Shri Ashok Paswan and Krishna Sahu who were regularized as per the Award dt.24.12.1991 in the Reference No. 36 of 1991 based on their agreement dt. 7.10.1991 mainly on the ground that Sweeping and cleaning jobs are prohibited category. After raising the Industrial Dispute before the ALC ©, Ranchi, in Feb.,1992 which resulted in the instant Reference due to failure in its reconciliation, the workman concerned had filed the CWJC No.1947/1992 (R) before the Hon'ble Patna High Court for appropriate reliefs, but it was withdrawn as per the Order dt. 2.2.1993 with the observation enabling them to seek appropriate remedy under the Industrial Dispute Act,1947.The management out of annoyance and bias arbitrarily and illegally prevented, discharged or terminated both the workmen from their duties w.e.f. 24.7.1992 till date contrary to the provision of the Indian Constitution, and mandatory provisions under Sec,.25 F,G & H of the I.D.Act. as well as against the Certified Standing Orders concerned of the CMPDIL, though the both the workmen Shami Alam and Mozibul Haque had continuously rendered their services for more than 240 days from 6.11.1989 and 5.5.1990 respectively prior to 31.3.1991,and even as casual from 1.4.1991, so they were permanent workmen on 24.7.1992, the date of their illegal termination; similarly situated six other workmen never completed 240 days working with present ones were regularized in Cat.I, but both the workmen have not been regularized. At last, the failure in

conciliation in the Industrial Dispute before the ALC©, Dhanbad, resulted in the reference for an adjudication. The action of the Management in terminating the services of both the workmen without compliance with the Sec. 25 F of the I.D.Act, 1947 is unjustified.

4. The Union concerned in its rejoinder for the workmen has categorically responded to the written statement cum rejoinder of the OP/Management as without proper authority as merely distorted statements which are false, frivolous and totally irrelevant. The rejoinder of the Union concerned appears to be nothing new except the repeated case of both the workmen under an adjudication.

5. Whereas the case of the OP/Management is that the employer is registered as per the Registration No.13798, Ranchi under the Bihar Shops and Establishment Act,1953, and has already applied in the year 1993 for renewal of the certificate, as it is not the owner of any mine to run any coal Mines or to produce coal. So it is not the Coal Industry as a controlled one under the Controller Industry as notified as per the Notification dt.5.1.1957 (SRO-68) of the Ministry of Labour.The Employer does not manufacture or produce coal, coke or other derivatives as notified as a controlled industry. The records of the OP/Management disclose that both Muzibul Haque and Sri Shami Alam were working with the Up-Keep Contractor of the Employer M/s S.K.Tiwary, the Civil Contract from 5th May, 1990 and 6th Nov., 1989 respectively. Factually, they were engaged as contract labourers through the contractor for upkeep of the employer(H.Qr.) Township of area around the residential and non-residential building etc. The upkeep of works include all road, roadside berms, common stairs, drains intermittently, collection of all types of garbages, disinfections, anti mosquito treatment, maintenance of play ground, plantation etc around the residential or non-residential buildings as directed by the Officer-in-charge at times. These items of work are not prohibitory category under the Contract Labour (R & A) Act, 1970, as sweeping,cleaning,dusting is prohibited for buildings. The Union has raised an Industrial Dispute before the ALC©, Ranchi for regularization of Sri Ranjit Kumar Minz and 17 others, contract labourers engaged on upkeep of the residential and non-residential buildings of the employer as per their letter dt.21.8.1989. But the said dispute did not mention the names of Sri Shami Alam and Sri Muzibul Haque.During the pendency of the dispute, the CWJC No.1004/1990® filed by Sri Krishna Kumar Ranjan & other before the Hon'ble High Court, Patna, Ranchi Bench, was withdrawn, as the matter was pending before the Conciliation Officer. The Industrial Dispute due to failure of its conciliation resulted in the reference for an adjudication.

Further it is alleged that during the pendency of the dispute, as per the memorandum of settlement was signed by both the parties on 7.10.1991, it was agreed that except the workmen concened,the claim of no other persons concerning the on-going contracts for sweeping and cleaning jobs at CMPDI (H.Q) as sweeper or otherwise would be raided by the Union nor would be considered by the Management for regularization/appointment. An award in the reference No. 36/91 in view of the Memorandum of the Settlement was passed as fair and proper by the Tribunal. But the Union in contrary to the terms of the aforesaid settlement raised two I.Ds. before the ALC©, Ranchi, which ended in failure resulting in the instant reference for an adjudication. One writ CWJC NO.1947/ 1992 (R) before the Hon'ble High Court, Patna, Ranchi Bench was also filed by the Union for regularization and payment of alleged unpaid wages. At the time of aforesaid Settlement dt.7.10.1991 by which the Union is bound by the rule of estoppel and precluded from raising the present dispute, the names of both the persons Muzibul Haque and Shami Alam were not brought to the notice of the Management by the Union, although at that time they were working as contractual labourers. The contractor concerned has the liability to maintain his contractual labourers under Sec.75 to 77 and 67 for the aforesaid Act,1970. No prior approval of the Competent Authority was taken for such engagement. Necessary action has been initiated against the officer concerned for his aforesaid lapse.

Besides, the CMPDIL being a Government Company within the meaning of Sec.617 of the Companies Act has to abide by the provisions of the Employment Exchange (Compulsory Notification of Vacancies), but it can not allow backdoor entries into the Organization, depriving equal opportunity to the persons already enrolled in the Employment Exchange who are awaiting for their terms since long, as it would amount to violation of Articles 19 and 16 of the Constitution India.

6. The OP/Management in their simultaneously rejoinder has categorically denied all the allegations of the Union/workmen, further stating that the upkeep works of the areas around the residential and non-residential buildings are intermittent in nature for which the employer takes the services of the Municipal Corporation, Ranchi, as well as of the sweepers existing on the rolls of the Employer at H.Qr, Ranchi, for sweeping and cleaning jobs. No fact of supervision departmentally arises in the case of contractual workers. The provisions of the said Act 1970 are applicable to employment of twenty or more workmen on any day of preceding 12 months as contract labourers. Even assumedly departmental supervision and supply of material/tools do not establish employer-employee relationship, as it involves direction to the servant what work the servant to do and how to do, it depends on his skill and there is a fair clement of thought freedom. Both the casual workmen can not be equated with the permanent workman of the Employer, as the latter are selected out of the candidates sponsored by the Employment Exchange,

and after passing the Selection Test, so they posses skill. So far as the payment of alleged unpaid wages is concerned, the employer in view of the obligation under the Act, 1970, time & again offered them their wages but they refused it. So they are bound by the estoppels rule. Had they worked w.e.f. 1.4.1991, their names would have been certainly brought on surface in the aforesaid settlement by the Union. Moreover, only (P) marked against the names of persons concerned in the present reference appears to be a doubt over their genuine attendances. Both the workmen were not authorizedly engaged. In such circumstances, the question of any termination or violation of any provisions as alleged does not arise.

An additional Written statement dateless filed on behalf of the OP/Management dealing with a few rulings of the Hon'ble Supreme Court can not be treated as their further pleading in their case as also based on their repeated facts.

7. The case of both the workmen as represented by their Union in their analogous Ref.No. 49/1995 related to their claim for regularization is rather replica of their case as totally represented by the Union in their previous Ref. No. 60/1993 concerning their alleged termination. Their emphatic pleading is that since the workmen case stood on the same footing as the case of S/Shi Ashok Paswan and Kishna Sahu in their Ref. No. 36/91 in which an Award dt. 24.12.91 was passed on the basis of the agreement dt.7.10.1991 existed for rgularisation, and accordingly they were regularised,there was no reason to deny the regularization of both the instant workmen who were also included therein. Further alleged is that consequent upon the letter dt. 22.4.92 of the H.O.D.(Town Engineering / Maintenance) M.B.Soren, as the Controlling Officer of the workmen as per the Office Note dt.23.4.992 had also in that aspect, recommended for initiation of absorption of both instant workmen Mozibul Haque Hussian and Shami Alam who were engaged as contract labour w.e.f. 5.5.1990 and 6.11.1989 respectively still working till the date, completing more than 240 days before 1.4.1991 but due to their names not figuring in the Settlement, so their non-receipt of payment w.e.f. 1.4.1991, in lack of approval, as well as for payment of their wages @ Rs.24.50 for their engagement as casuals w.e.f. 1.4.1991 to 31.3.1992. Both the workmen as per their letter dt. 26.6.1992 had refused the allegations of the employment as contract labour,as there were no contract after 1.2.1990, rather they including other 17 workers later regularized were converted into casual Sweepers w.e.f.1.4.1991 as evident from their signatures/marked Attendance in the Attendance Register.

The workmen had filed the Writ CWJC NO.1947/ 1992 (R) before the Hon'ble High Court, Patna (Ranchi Bench) for their regularization and other relief. But it was withdrawn as per the Order dt. 2.2.1993 to enable to seek a remedy under the Industrial Dispute Act 1947. Thereafter they were arbitrarily and illegally terminated without any notice violating the Sec. 25 F & G of the I.D.Act 1947 and Art. 23 of the Fundamental Right under the Constitution of India, for which they had filed the aforesaid Industrial Dispute which came into existence Ref.No.60/93 pending before the CGIT cum . LC (NO.) 2, Dhanbad, following the order dt. 23.2.95 of the said Hon'ble High Court in the CWJC No.3288/1994 (R) which was filed in a challenge to the Order dt.30.4.1993/4.5.1993 of the appropriate Government declining to refer the I.D, for an adjudication.

Further it is alleged by the Union for the workmen that the jobs of sweeping and cleaning of the buildings and their walls to furniture, drains, floors, as well as those of the Guest Houses and the Official residences of the CMD and Directors were alleged to be under the paper arrangements of contract in order to exploit them as contract labourers .The paper arrangement of contract labour was a deliberate fraud. Sweeping and cleaning is neither intermittent nor casual in natue.Sweeper is a regular and perennial post under Category I under the NCWA. Both the workmen S/Shri Shami Alam and Mozibul Haque Hussain continuously rendered their services w.e.f. 06.11.1989 and 5.5.1990 respectively, performing the duties of the Sweepers in Category I initially as purported contract Labour upto 31.3.1991, then as casual on Muster Roll upto 27.7.1992 until their arbitrary discharge from their duties. There was neither any contract nor any contractor ever since 1.2.1990. Even after the illegal termination of the workmen, later on other six workmen engaged for similar jobs on completion of their 240 days services were promptly regularized in Category I , though they were not included in the Man power of the CMPDIL not any vacancy against the sanctioned post prior to 27.2.1993, the date they were included in their Manpower, following the recommendation of the Controlling Officer, the approval of the C.M.D. and the sanction thereof on 17.2.93, 20.02.93 and 23.2.93 respectively, as they were at all the Ministers 'candidates above the law. Almost 70% - 75% of the workmen of the CMPDIL are those originally employed as casual or on contract as contractor and they are regularized on their job/duty employed. Such workmen 1149 and 152 in number were regularized by the orders dtt. 7.12.1981 and 5.1.1989 respectively and thereafter over 350 workmen as well. Both the workmen Shami Alam and Muzibul worked for more than 2 years 9 months and 2 years and two months respectively as casuals on permanent post of Sweepers from 1.4.1991 to 24.7.1992 directly under the CMPDIL.They could not be legally terminated violative of Sec. 25 F of the I.D.Act 1947, and the Certified Standing Order of the Company. The action of the Management in not regularizing both the workmen is malafide and unjustified. The workmen are entitled to resentatement/regularization as Sweepers w.e.f. 6.11.1989 and 5.5.1990 respectively with their wages differences up to 31.3.1991 as well as well full wages of category I and other consequential benefits w.e.f. 1.4.1991.

8. On the other hand, the contra pleaded case of the OP/Management irrespective of the cited rulings in the Ref. Case No. 49/1995 (analogous to Ref. No. 60/1993) is that the Management on notice had also represented before the A.L.C. concerned that both the workmen Shami Alam and Mozibul Haque Hussain were working with the upkeep Contractor of M/s S.K.Tiwary,the Civil Contractor w.e.f. 05.05.1990 and 06.11.1989 (reversely written) respectively. They were engaged as contractor's labourers through the said contractor for upkeep of the Employer's Township of area around residential and non-residential buildings. The Contractor M/s S.K.Tiwary had supervision and control over the workmen. The contractor was their employer, not the Employer Management; they (Management) had no control over them. Payment was made to them by the contractor, and not directly by the Management; thus, there never existed any Master -servant relationship between the Management / the principal employer and both the workmen /the contract labour.Since the workmen were not issued any appointment letter, no matter of recruitment process about it arises.Sec.10 of the CLR Act provides neither expressedly or impliedly for automatic absorption under its Sub Section 1 nor prohibiting an employment of contract labour in any process ,operation or other work in any establishment. Since no employer-employee relationship existed between the Management and both the workmen, no question of their regularization arises. Therefore, they are not entitled to any relief. Moreover, if a dispute was raised by the Union directly with the Government but not with the Management, it will be treated as a request or a demand, but not an Industrial Dispute. So the instant reference is itself bad in law.

FINDING WITH REASONS

9. In the instant Reference and its analogous one,WWI Shami Alam, WW2 Mozibul Haque Hussain, both the workmen on their affidavited chiefs, and WW3 N.C.Choudhary ,Retd.Dy. Estate Manager, CMPDIL, Ranchi produced on behalf of the Union have been examined by the OP/Management, on whose behalf MWI Bishambhar Mishra, working on lower level has been examined.

On the perusal of the pleading, evidences and documents of both the paries, the indisputable facts are visible as such:

Both the workmen Shami Alam and Mozibul Haque Hussain were engaged as casuals through contractor M/s. S.K.Tiwary as per their Attendance Register maintained by the contractor, and countersigned by Mr. C.N. Chakraborty.They were never engaged against permanent vacancy in the post of the Sweepers.

As per the Award dt.24.12.1991 (Ext.M.1) based on the settlement dt.7.10.1991 (Ext.M2) on others Reference No. 36/1991, out of its total 18 (never 19 as alleged by the Union in the instant Reference), only 17 contractual casuals were regularized as the sweepers, but neither the said Reference nor the Award includes any name of both the instant workmen Shami Alam and Mozibul Haque Hussain anywhere.

But other facts of both the parties at variance with others evolve important issues which need to be determined for proper adjudications in both the references:

(i) Whether there was any employer-employee relationship between the OP/Management and both the workmen any time.

(ii) Whether both the workmen had continuously worked even as casuals for 240 days at the relevant time. Whether they are entitled to regularization in the services of the Management.

(iii) Whether both the workmen were terminated by the OP/Management from their services, and

(iv) Whether the References are maintainable legally or factually.

10. At the first issue, Mr.C.S.Pathak, the Union Representative for the workmen has submitted that since workmen Shami Alam (WW1) in the examination- in -chiefs is alleged to have stated the initiation of Note sheet dt. 23.4.1992 (Ext.W.3/1 with objection) by the H.O.D. Soren as a proof of the engagement of both the workmen by the Management just as co-workman Mozibul Haque Hussain (WW2) in his chief Para 8 has affirmed it for the regularization. But I find that in view of their examination - in-chiefs, the photocopy of the Note sheet dt. 23.4.1992 (Ext.W.3/1 with objection) is contradictory to the alleged Note sheet dt.18.3.1992 (Ext.W.3 with objection) as unauthenticated documents. Moreover, neither of the alleged Note sheets proves their engagement by the Management. Moreover, it is settled law that "internal communications while processing a matter can not be used to be orders issued by the Competent Authority unless they are issued in accordance with law "AIR 2010 SC 3455 : (2010) 1 SCC (LS) 385,Union of India & Anr Vs. Kartick Chandra Mandal & Anr.:

Further Mr.Pathak has to submit that neither license of the alleged contractor nor Registration Certificate of the Management has been filed by the Management and that the payment of Wages in accordance with their attendances as per the photocopy of the Attendance Register (Ext.W.2 series) for their work of sweeping of permanent nature under control of CMPDIL implies their working as the employee of the Management. In support of his arguments Mr.Pathak has though cited the rulings : 1978 LAB IC Page 1264,Hussainbhai Vs. Alath Factory, 2008 AIR SCW Page 3096 (SC) and 2011 LLR Page 1079, Bhilwara Dugdh Utpadak Sahakari S Ltd. Vs. Vinod Kumar.

On the other hand, the contention of Mr. B.K. Sinha, Dy. Manager as the Representative for the Management is that admittedly both the workmen were engaged through the specified contractor for keep -up of the employer (H.Q) Township of Area around residential building and non-residential buildings etc; they we admittedly not appointed by the Management against any sanctioned posts; there is no Master and Servant relationship as held in the case of Telco Convey Drivers Vs. Tata Steel reported in 2001 (Vol.II)) JCR 2001.But Mr.B.K.Sinha the Management Representative submitted that even the Attendance Register proves the working of the workmen under the contractor but not under the control of the Management ; moreover the provision of the CL (RA) Act nowhere provides for making the admitted contractor an agent for creating any relationship of master and servant between the Principal Employer and the contractual labour; as such no question arises about such relationship between the management and the contractor workmen. Mr. Sinha, the Management Representative has argued that "Theka Mazadoors (Contract Labours) are not regarded as regular workmen and their status would not be higher than that of a temporary workman or probation on fact, so the respondent workman having been appointed as Theka Mazdoors have no right to regularisation or reinstatement as regular workmen as held by the Hon'ble Supreme Court in the case of Manager, Reserve Bank of India Vs. S.Mani & Others reported in 2005 SCC (L&S)609. Further it is now well settled," Mr. Sinha, the Management Representative has added, that "only because a person has been working for more than 240 days he does not derive any legal right to be regularized in service" (2007) I.S.C.C. 533 at page 542 (Paras 28-30) and as also earlier held by the Hon'ble Apex Court in the case of Secy,State of Karnataka and Ors Vs. Uma Devi & Ors (2006)4SCC.

Considering aforesaid tangible facts, I find that there was never any employer & employee relationship between both the parties at any time. Finding the engagement of both the workman as casuals by the Civil Contractor M/s S.K.Tiwary for sweeping etc. upkeep of the Management's areas of their buildings, I am of the view as held by the Hon'ble Supreme Court in the case of Steel Authority of India Ltd. Vs. N.U. Water Front Workers reported in (2001) LAB I.C. 3656 (SC) that engagement of contract labour by the contractor does not create relationship of master and servant between the contact labour and the principal employer (Paras 101,114 and 119).In these references ,there was never any employer-employee relationship between both of the parties.

11. As regards the second issue over the continuous working of both the workmen, according to the statements of workmen Shami Alam and Mozibul Haque (WWI and 2 respectively),they had continuously worked as sweepers from 6.11.1989 and 5.5.1990 respectively till 24.7.1992, the date of their together termination illegally, so they are entitled to their regularization as also argued by Mr. C.S.Pathak, the Union Representative. Whereas Mr.B.K.Sinha for the OP/Management contended that since both the workmen were not employees of the O.P./ Management, so question of their termination does not arise.

The perusal of the photocopies of the Daily Attendance Register (Extt.2 and 2/1 series) respectively for the period from August to Dec.,1990, Jan. to Nov,1991 and Jan. to April,1992 manifests no proof of their continuances working as sweepers for more than 240 days during a period of twelve calendar months from May 1991 to April,1992 preceding to the date with the reference to be calculated, as there is no proof of the Daily attendance Register sheet for Dec.1991. Rather it proves the irregular daily casual working of both the workmen. Since the Union/ workmen fails to prove that they had a legal right under the status or rule to enforce it, such employees employed on temporary, contractual, casual, daily wage or adhoc basis do not have an enforceable legal right to be permanently absorbed as held by the Hon'ble Apex Court in the case of Secy, State of Karnataka Vs. Uma Devi (2000)(3)S.C.C.(L & S))753(Para 52)

12. As to the third issue of termination, it is an acknowledged fact that both the workmen were purely casual workers of the Civil Contractor M/s S.K.Tiwary, none of the them had continuous service for more than 240 days as prerequisite nor they have any termination papers, so no question arises about the alleged termination by the OP/Management, as they were not the regular employees of the OP/Management. The unengagement of both the casual workers on work of sweeping based on a contract is not their termination. Contractual Employment as meant under clause (bb) of Sec.2 of the Industrial Dispute Act, 1947 always renewable or unrenewable as well, and in case of unrenewable, there is no termination, as the contractor workers had not continuous working for more than 240 days at a relevant time. In such circumstances of their temporary contractual status, no Notice u/s 25F of the I.D.Act, 1947 by the Management is applicable nor any question over it arises, as they were never regular employees of the OP/Management.

13. At the last issue as to the maintainability of the I.D.Cases before the Tribunal, earlier this issue was raised by the OP/Management over it on which the Tribunal as per Order Nos. 45 and 37 both dt.21.3.2003 in both the Reference cases respectively has instructed to raise it at the time of final hearing. At this issue, the O.P./ Management appears to have not agitated by way of any oral statements of their witness. At this point, Hon'ble Supreme Court has already been pleased to hold that while exercising power under Sec.10 (1) the function performed by the appropriate Government is an administrative function and not a judicial or quasi judicial function. The

only power of the Central Gvernment is to determine prima facie whether an Industrial Dispute exists or not', 1985 (51) FLR 71(SC) Ram Avtor Vs.State of Haryana. Once the reference is made by the Central Govervent, the jurisdiction of Tribunal come into existence for adjudication in it. The term "industrial dispute" 11 as defined u/s 2(k) of the I.D. Act means any dispute or difference between employers and workmen. Both the References as Industrial Disputes. are maintainable in eye of law.

14. In result, it is, in the terms of the Ref. No. 60/1993 hereby responded and awarded that in view of status of both workmen S/Shri Shami Alam and Mozibul Haque Hussain purely contractor labourers having no continuous working as sweeper for more than 240 days at the relevant, no question either for the alleged action of the Management of M/s Central Mine Planning and Design Institute Ltd. (CMPDIL) for their alleged termination or for giving them Notice, pay or compensation for it arises. None of the workmen is entitled to any relief.

Accordingly, it is, in the terms of the Ref.No.49/ 1995,hereby responded and awarded that the action of the Central Mine Planning and Design Institute Ltd.,Ranchi is quite justified in not regularizing the alleged services of S/Shri Mozibul Haque Hussain and Shami Alam as sweepers w.e.f. 5.5.1990 and 6.11.1989 respectively ,and also justified in not paying wages of Cat-.I as per NCWA-IV, as they were not regular employees of the management. Hence, none of the workmen is entitled to any relief from any date.

KISHORI RAM, Presiding Officer

नई दिल्ली, 1 जनवरी, 2015

का.आ. 67.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार फडरल बैंक लि. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, अरूणाकुलम के पंचाट (संदर्भ संख्या 11/2012) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-12-2014 को प्राप्त हुआ था।

[सं. एल-12012/25/2012-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 1st January, 2015

S.O. 67.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 11/2012) of the Ernakulam as shown in the Annexure, in the industrial dispute between the management of Federal Bank Limited and their workmen, received by the Central Government on 31/12/2014.

[No. L-12012/25/2012-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri D.Sreevallabhan, B.Sc., LL.B, Presiding Officer

(Wednesday the 10th day of December, 2014/19th Agrahayana, 1936)

ID 11/2012

Workman : Shri Hareesh V Sreejaya
Valiyil (H), West Hill PO
Kozhikode - 673005

By Advs. Shri T G Rajendran &
Shri Prakash P George

Management : The Managing Director,
Federal Bank Limited,
Head Office Aluva - 683101

By M/s. B S Krishnan Associates

This case coming up for final hearing on 10.12.2014 and this Tribunal-cum-Labour Court on the same day passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Government of India/Ministry of Labour as per Order No-L-12012/25/2012-IR(B-I) dated 13.03.2012 referred the industrial dispute scheduled thereunder for adjudication to this tribunal.

2. The dispute is:

"Whether the action of the management of Federal Bank Ltd., Aluva, Kerala in imposing the penalty of 'Dismissal without Notice upon Shri Hareesh V vide their order dated 12.5.2011, is legal and justified? To what relief the workman is entitled?"

3. Workman was working as a bank man-cum-lift man in the Regional Office of the Federal Bank at Alapuzha. His service was terminated for the reason that the workman had committed fraud by availing two gold loans by pledging spurious gold ornaments. Challenge is made by the workman about it by raising this industrial dispute.

4. After submission of pleadings by both parties the case was posted in the Lok Adalat as agreed to by them. There was a full and final settlement of the dispute and a compromise was filed jointly by both the parties. There is nothing illegal in accepting the compromise. Hence the compromise is accepted and an award is passed in terms of the compromise. The compromise will form part of the award.

The award will come into force one month after its publication in the Official Gazette.

D. SREEVALLABHAN, Presiding Officer

APPENDIX - NIL

IN THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

ID 11/2012

Shri Hareesh V,
Sreejaya, Valiyil (H),
West Hill PO,
Kozhikode - 673005 ...Workman

Vs.

The Managing Director,
Federal Bank Limited,
Head Office Aluva - 683101 ...Management

The Matter was taken up in Lok Adalat and the parties agreed to settle the dispute on the following terms :

1. The Management agrees to pay Rs. 81,060 (Rupees Eighty One thousand sixty only) being the Provident Fund amount and interest, due to him as on date, within 10 days from the date of his executing necessary documents for releasing the PF.

2. The workman agrees to accept the said amount of ₹Rs. 81,060 (Rupees Eighty One thousand sixty only) towards the full satisfaction of all his claims against the management in respect of his employment with the Management bank and the workman further undertakes that the would not claim any money or raise other demands as against the management bank in connection with his employment or non employment.

3. The punishment of 'dismissal' imposed on the workman vide order dated 12.05.2011 stands modified as 'discharge'. However, the workman would not be entitled to any monetary or other benefits than what has been mentioned above.

Dated this the 10th day of December, 2014

Workman	:	Sd/-	Management	:	Sd/-
Counsel of Workman	:	Sd/-	Counsel of Management	:	Sd/-

Sd/-
Mediator

नई दिल्ली, 1 जनवरी, 2015

का.आ. 68.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय स्टेट बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 282/97) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-12-2014 को प्राप्त हुआ था।

[सं. एल-12012/236/96-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 1st January, 2015

S.O. 68.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 282/97) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of India and their workmen, received by the Central Government on 23/12/2014.

[No. L-12012/236/96-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL CUM LABOUR COURT, JABALPUR

NO. CGIT/LC/R/282/97

Shri Hukum Singh Bagga,
S/o Shri Harbans Singh Bagga,
52, Pratap Nagar,
Indore ...Workman

Versus

Asstt. General Manager,
Region-3,
State Bank of India,
Zonal office, Bhopal ...Management

AWARD

Passed on this 5th day of December, 2014

1. As per letter dated 1-10-97 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/236/96-IR(B). The dispute under reference relates to:

> "Whether the action of the management of State Bank of India, Bhopal in dismissing the services of Shri Hukum Singh Bagga, S/o Shri Harbans Singh Bagga, Ex. Cashier-cum-clerk w.e.f. 23-9-95 is legal and justified? If not, to what relief the workman concerned is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist party submitted statement of claim at Page 2/1 to 2/7. The case of Ist party is that he was suspended as per order dated 3-8-91. Chargesheet was issued to him

on 15-5-93 alleging misconduct on his part. Workman submitted his explanation denying alleged misconduct by him. Enquiry was conducted against him from 12-1-94. The written notes of argument were submitted on different dates. Enquiry Officer found charges proved against him, showcause notice was issued to workman on 5-6-95. He submitted explanation to showcause notice on 27-6-95. The punishment of dismissal was imposed against him. Workman feeling aggrieved by order of his dismissal preferred appeal. The appeal was dismissed on 29-1-96. Workman raised dispute after failure report by Conciliation Officer, dispute is referred. As per order dated 11-4-2014, enquiry against workman is found proper and legal. Therefore the detailed pleadings of workman on the point is not narrated. Workman had contented that enquiry was not properly conducted. Principles of natural justice were not followed. Enquiry Officer had allowed examination in chief of all witnesses and their re-examination before completing cross-examination. Enquiry Officer did not consider his defence. He was not given opportunity to adduce any evidence for his defence. That workman was punished on surmises and conjectures. Enquiry Officer was pre-just. There is no direct oral or documentary evidence to prove charges against him. Any charge is not proved. Enquiry Officer held him guilty on conjectures and surmises. It is submitted that order of dismissal is illegal. On such ground, workman pray for his reinstatement with backwages.

3. IInd party filed Written Statement at Page 9/1 to 9/6 opposing claim of workman. That Ist party workman was award staff employee covered by provision of Sastri Award, Desai Award etc. Workman was subjected to disciplinary proceedings for major misconduct involving dishonesty and fraud. Charge sheet was issued to workman. Reply was submitted by him. Domestic enquiry was held by Enquiry Officer. After showcause notice, punishment of dismissal was imposed. That workman was guilty of charges as per report of the Enquiry Officer. The material witnesses were examined. Workman was given fair opportunity for his defence. Contentions of workman that findings of Enquiry Officer are not justified is denied.

4. IInd party submits that after re-appreciation by Tribunal, only question if any survive is consideration of quantum of punishment. IInd party referred to ratio held in various cases submitting that the basic concept is no real prejudice should be caused. Justice could be done. On the point of quantum of punishment, it is submitted that punishment is to be judged by the Disciplinary Authority and interference by Tribunal should be made in rare cases. IInd party denied that enquiry was conducted violating principles of natural justice. No prejudice was caused to the workman vitiating enquiry. That showcause notice was issued to workman alongwith copy of findings of Enquiry Officer. The claim of delinquent employee on frivolous grounds is not justified. On such contentions, IInd party prays that reference be answered in its favour.

5. As per order dated 11-4-2014, the enquiry conducted against workman is found proper and legal.

6. Considering pleadings on record and findings on preliminary issue, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i)	Whether the charges of mis-conduct against Ist party workman are proved from evidence in Enquiry Proceedings?	In Affirmative
(ii)	Whether the punishment of dismissal imposed against workman is proper and legal?	In Negative
(iii)	If not, what relief the workman is entitled to?"	As per final order.

REASONS

7. As per Exhibit M-1, chargesheet issued to workman, the charges against workman are on 16-4-91, two accounts in name of Sumit construction and M/S Suprit construction Company were opened in the Pitampur branch. Workman had not obtained identification of Account Holders. Cheque books were issued in name of Suprit construction-941926-950, in name of Sumit construction – 94195-975. The Ink was spitted over the entries in the register and it could not be known to whom the cheque books were issued. Charge No.2 relates to transfer of account of Dewas Branch of suprit construction. Some person deposited cheque of Rs. 45,000/- in said account. The payment of cheque amount was shown on 25-4-91. Amount of Rs.44,000/- was fraudulently withdrawn on 26-4-91 by one Dilip Singh. Charge No.3 on 26-4-91, cheque of Rs. 1,71,000/- was issued by Suprit construction inn favour of Sumit construction. As the account was transferred, said cheque was sent to Dewas branch on 17-5-91, cheque was submitted for payment. Payment of cheque was stopped as Branch Manager found signatures were not tallying.

8. Learned counsel for Ist party Shri Choubey submits that workman was not concerned with payment of Rs. 44,000/- to Shri Dilip Singh. Workman was not concerned with obtaining identification of signatures at the time of opening Account. Amount of Rs. 44000/- was paid by other employee. Workman was not concerned with the payment of Rs.1,70,000/- by cheque. The charges against workman on both grounds are not proved.

9. Counsel for both parties submitted notes of argument pointing out relevant evidence of witnesses in Enquiry Proceedings. Therefore evidence in Enquiry proceedings needs to be considered. Witness No.1 Anil Kumar Mishra in his statement at Page 8 of Enquiry Proceedings says the cheque of Rs. 44,000/- payment was made by him to Shri Dilip Singh. His signature was on

reverse side of cheque. As signature was not clear, he had obtained his name on reverse side of the cheque. At Page9 of his statement, witness No.1 says PEX-19 SC7/43 Rs. 1,74,000/- was not received by him for dispatch. At Page 11, the witness says amount of Rs. 3000/- PEX 29 was given by Shri Bagga workman for sumit construction Account No. 2/271. Witness No.2 Swadesh Kumar Sharma in his statement at Page 13 says that he had given receipt for depositing cash for both Accounts. On the concerned day, he was working at counter at Page 14 witness No.2 says on 17-5-91 cheque of Rs.1,70,000 for payment he had not taken entry. When he came to his table, the posting of cheque was found. On his enquiry, Shri Bagga(workman) told that one Sardar had come for receiving payment while drunken condition. That he had returned cheque to him and got back the token.

10. Witness No.3 Rishabh Kumar Jain admits he had taken posting of cheque of Rs.44,000/-. He had issued token. He had made postings in ledger. He had taken entries of cheque of Rs.1,75,000/- TX-90. He had taken entry in day book and sent to passing officer. His further statement shows Bagga workman told him that party was desiring to take the documents by hand. He explained that the customer's account was new and documents by hand are not allowed. Bugga workman replied that previously document by hand were allowed. Witness No.4 Rajkishore Vyas at Page 20 in his statement says that he had not accorded permission for opening accounts. Entire work was done by Bugga workman. Workman told him that party was standing in hall. When he inquired from the party almost questions were replied by Shri Bugga workman. When he asked workman why he was giving reply to the question, he told that he had got full information and reply the question, he did not suspect the workman. When Witness No.4 asked question about signatures of identification, Bugga told him that he would take identify to him. At Page 23 of his statement, witness No.4 says the cheque book issued as self was struck out and corrected the word bearers in his absence. The witness explained that at the time of opening account, he entitled the cheque book given to counter clerk. At Page 24, witness No.4 says he asked Bugga cheque book issued for self how he had given cheque to bearer, why he did not return back cheque book in the evening. On that workman told him that he had kept cheque book in drawer as party had not come till evening. On next day, the person carrying letter called cheque book therefore he had returned bearer pertaining the acknowledgement. At page 25, Witness No.4 says after issuing cheque book, receipts were entered. No ink was spitted over it. At page 26 witness No.4 says that he had asked why the account was being transferred within short period. Bugga workman told him that the parties did not get proper work. Large contract was received by party at Dewas and therefore transfer of account was sought. At Page 28, witness No.4 says SC Dispatch register after putting his signature with Schedule was prepared. It was kept in dispatch trey. At Page 30, witness No.4 says cheque and SS Book, the party was asked payment of whole amount. Account was new, party be sent to him. After sometime Branch Manager came to him with cheque and SS Book enquiring who was identifier. That Shri Bugga workman had told him for about signature of identifier were not obtained despite of reminder. Branch Manager asked that identifier be called to him. Shri Bugga was hearing all those talks. The evidence is clear that Bugga had returned cheque of Rs.1,70.000 and received back token from him. When Manager himself had found that signature were varied payments were stopped. The conduct of workman is not free from blemish. Workman remained absent o subsequent dates. Enquiry Officer had recorded his findings considering the circumstances of evidence. Evidence discussed above certainly supports findings of Enquiry Officer. At every point of opening account, payment of cheque, verification of signatures Bugga workman was taking interest for reasons not explained by the workman.

11. In his notes of arguments, learned counsel for workman Shri Pranay Choubey has narrated the procedure about payments of cheques and taking entries. Evidence of Witness No. 2 at Page 13 that he was doing SC Dispatch and Saving Bank on 23-4-91. That Shri R.K.Vyas Accountant witness No.4 carried out the job of checking details. Counter clerk enters cheque details in SC dispatch etc. Witness No.2 with witness No.4 after making his initials in SC dispatch register with instrument Schedule, puts in dispatch trey. The evidence of the witnesses discussed above clearly shows that workman shown interest at all stages of opening account, signatures of identification, withdrawal of amount by cheque of Rs. 1,70,000/-. He himself returned back cheque to the person without permission of accountant. Amount of Rs.35,000/- is recovered from account for his lapse but evidence shows that workman also taken interest at various stages. Certainly Bank has suffered loss of Rs. 44,000/-. Said amount was recovered from account has submitted during course of argument.

12. Learned counsel for IInd party Shri Shroti in his notes of argument has pointed out evidence of witness No.4 S.C.Vyas called party and asked questions, most question were replied by workman. At Page 33Witness No.4 says at time of payment of Rs.44,000/- to Dilip, he asked Bugga about verification of signature of introducer to which Bagga he will get this done later and he may approve the payment. Witness No.5 Madanlal at Page 49 of his statement says that name and account number of introducer is not available in specimen signatures. When he asked Bagga about the same, he informed that payee is not available. W.r.t. charge No.2, Witness No.4 working as Accountant says on 20-4-91, application for transfer of account was submitted to him by Shri Bugga and party

was with him. Vyas prepared forwarding letter for transfer of account Madanlal Sharma witness No.5 in his statement at page 53 to 55 of Enquiry Proceedings says that account of SPCC was never transferred to Dewas. The fact that Bugga left the branch early at about 2 PM. He remained absent for few days his compositing of Ist party workman attempting to fraudulently withdraw amount of Rs.1,70,000 is clear from evidence in Enquiry Proceedings. His complexity is also that signatures of identifier were not obtained despite of repeatedly asked.

13. Learned counsel for workman Shri Pranay choubey submits that Disciplinary Authority not agreeing with findings of Enquiry Officer charges partly proved, no showcause notice was issued. Shri Shroti submits that said points relates to legality of the enquiry proceedings. The order holding Enquiry Proceeding proper and legal is final, the point cannot be argued. I agree with above submission therefore ratio held in S.P.Malhotra versus Punjab National Bank and others reported in 2013(7)SCC-251 cannot be applied to case at hand.

14. Ratio held in Ram chander versus union of India and others relied by learned counsel for workman in Civil appeal No. 1621/1986 on the point that natural justice has no bearing in view of the order of preliminary issue has received finality. Witness No.1 Anil Kumar in his statement at Page 8 says S.C.7/36 for Rs. 45,000/- was not prepared by him. At page 42 , he says that cheque was found in drawer, he thought cheque must have been entered and therefore forwarded the same. He stated that work related to Sc 7/36 was done by shri Bugga. Witness No.2 Swadesh Kumar Sharma clerk cum cashier says that he did not receive SC 7/36 for Rs. 45,000/-. He did not enter cheque and the cheque was found in his drawer. That he forwarded cheque to accountant.

15. The evidence shows that amount of Rs. 44,000 was withdrawn by cheque and amount of Rs. 1,70,000 was attempted to be withdrawn by cheque but payment was stopped by Branch Manager. At all stages of opening account, deposit and withdrawal amount workman was taking interest, it shows his entire complexity in the entire case. Even workman deposited Rs. 3000/- in the account. He not submitted how he was concerned with those accounts. Therefore the substantial evidence clearly shows that workman was active in opening accounts, and assuring to secure signatures of identifier with contract by ALC/Manager. Because of his taking interest, one fraudulent transaction was completed but IInd attempt of withdrawal Rs. 1,70,000 was failed for vigilance shown by the Branch Manager. The Tribunal cannot reappreciate evidence as Appellate Authority. The finding of Enquiry Officer are supported by reasonable evidence and cannot be said perverse. For above reasons, I record my finding on Point No.1 in Affirmative.

16. Point No.2- as per my finding in Point No.1, charges against workman are proved, question remains for consideration whether punishment of dismissal imposed against workman is proper. The evidence clearly shows that workman has not received any amount in the transaction as a wrongful way. He has handed over the cheque of Rs. 1,70,000 to the concerned person receiving back token. It is certainly serious misconduct when attempt was made for fraudulent withdrawal of Rs.1,70,000, matter ought to have been investigated and culprit should have been subjected to penal action. Because of workman return back cheque receiving the token, further inspection in the matter were frustrated. As stated above, personally workman has not done forgery but he was taking interest at most of the stages of transactions. His complexities are there. The punishment of dismissal from service appears exorbitant and excessive. In my considered view, the facts and evidence on record, workman did not receive any wrongly gain, directly he has not committed forgery but he was taking interest at all stages, the punishment deserves to be modified. Considering length of service of workman instead of punishment of dismissal, punishment of compulsory retirement would be appropriate. Accordingly I record my finding in Point No.2.

17. In the result, award is passed as under:-

(1) The action of the management of State Bank of India, Bhopal in dismissing the services of Shri Hukum Singh Bagga, S/o Shri Harbans Singh Bagga, Ex. Cashier cum clerk w.e.f. 23-9-95 is not proper and legal.

(2) Punishment of dismissal of workman is modified to compulsory retirement.

Parties to bear their own costs.

R. B. PATLE, Presiding Officer

नई दिल्ली, 1 जनवरी, 2015

का.आ. 69.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 121/03) को प्रकाशित करती है जो केन्द्रीय सरकार को 23-12-2014 को प्राप्त हुआ था।

[सं. एल-41012/133/2001-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 1st January, 2015

S.O. 69.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 121/03) of the Cent.

Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen, received by the Central Government on 23/12/2014.

[No. L-41012/133/2001-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/121/03

Shri Nandkishore,
S/o Puttu Lal,
Vill: Khudaiganj,
PO Lavedi,
Distt. Etawah (UP) ...Workman

Versus

Divisional Railway Manager, (P),
Central Railway,
Bhopal ...Management

AWARD

(Passed on this 3rd day of December, 2014)

1. As per letter dated 9-7-03 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/133/2001-IR(B-I). The dispute under reference relates to:

> "Whether the action of the management of Central Railway Bhopal in terminating the services of Shri Nandkishore S/o Shri Puttu Lal w.e.f. 19-8-85 is justified? If not, what relief the applicant is entitled to?"

2. After receiving reference, notices were issued to the parties. Ist prty submitted statement of claim at Page 2/1 to 2/4. Case of Ist party workman is that he was appointed on 3-2-83 under PWI, Bhopal. On 18-8-85, he was illegally terminated from service without notice, retrenchment compensation was not paid to him. Workman submits that he was continuously working from 3-2-83 to 18-8-85 for more than 240 days. He acquired status of regular employee under section 25 B of I.D.Act. His services are terminated in violation of Section 25-F, G of ID Act. List of retrenched employee was not displayed on notice board. IInd party violated provisions of Section 25-G and Rule 76, 77 of ID Act. Principles of last come first go was not followed. He was not provided re-employment. IInd party had employed other persons Ramjit S/o Daulat Ram, Umashankar, Raendra Kumar etc. He submitted several representations that his grievance was not considered. He was called for test on 21-2-00. That appointment was not given to him only with motive for victimization. Workman reiterates that his services are terminated without notice, retrenchment compensation is not paid to him. On such ground, he prays for his reinstatement with back wages.

3. IInd party filed Written Statement opposing relief claimed by workman. IInd party admits appointment of workman as casual labour as per service card No. 31579 under PWI Bhopal. It is submitted that workman had completed only 117 days as casual labour. Workman himself left job. His services were not terminated as alleged by workman. As workman himself left job and he was not terminated by IInd party, there was no question of issuing notice or paying retrenchment compensation. The letter of workman for direct recruitment was not issued. Workman himself left job. Therefore there was no question of his victimization. Workman had not completed 120/180 days continuous service therefore he was not entitled to status of MRCL. On such ground, IInd party prays that reference be answered in it is favour.

4. Ist party workman submitted rejoinder reiterating its contentions in statement of claim. He denies that he himself left job from 18-8-85. It is submitted that he was continuously working and acquired status of employee under Section 25 B of I.D.Act. His services were illegally terminated without notice or paying retrenchment compensation.

5. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

(i) Whether the action of the management of Central Railway Bhopal in terminating the services of Shri Nandkishore S/o Shri Puttu Lal w.e.f. 19-8-85 is justified?	In Negative
(ii) If not, what relief the workman is entitled to?"	As per final order.

REASONS

6. Workman is challenging termination of his services alleging violation of Section 25-F, G, H of I.D.Act. Affidavit of his evidence is filed covering his contentions in statement of claim that he was appointed under PWI, Bhopal from 3-2-83 as casual labour. He was issued service card. His services were terminated without notice without paying retrenchment compensation. His affidavit is further devoted on the point that advertisement was issued by IInd party for direct recruitment on 21-8-87. He was called for screening on November 2002 but he was not appointed. In his cross-examination, workman says he was engaged on daily wages from 3-2-83 in place of Pancham, S/o Govindam. He admits that he started working from 24-4-85 and continued to work till 18-8-85. He denies suggestion that he left work of his own. In his further cross-examination

workman says he had reported for work in 1986 but work was not provided to him. He was unable to tell its date. He denies that he worked only for 117 days. He denies that he was paid weekly wages. Wage slip was not given to him. Management's witness Shailendra Sharma in his affidavit of evidence has stated that as per live register of PWI, workman worked for 117 days during 24-4-85 to 18-8-85. In his cross-examination, management's witness denies workman had completed more than 240 days work. Evidence of parties needs to be appreciated on the basis of probabilities whether workman himself left the work. The service card is produced by workman. Entries shows that workman was working during the year 1983, 84, total 677 days in 1985. Workman worked from 19-12-84 to 18-8-85. Evidence of workman shows that he was called for screening test in 1997, 2000 for direct recruitment but he was not appointed remained unchallenged. Workman is pursuing his grievances for illegal termination. It is difficult to believe that workman himself left job. Evidence of workman is supported by entries in service card produced on record. IInd party has not produced any documents about the working days of workman from 1983 to 85. Evidence of workman supported by entries in service card cannot be discarded. Learned counsel for workman Shri Ashok Srivastava relies on ratio held in

Case of Sanjay Kumar versus Chief Executive Officer, Ratlam reported in 2010(3) MPLJ-457. Their Lordship dealing with Section 25-F held the evidence produced by the petitioner workman was sufficient to prove that the petitioner has worked for more than 240 days, burden of proof shifts on the respondent employer to prove that petitioner did not complete 240 days of service in the requisite period to constitute continuous service.

Evidence of management's witness is not supported by documents therefore I accept evidence of workman that he completed more than 240 days continuous service. As per pleadings and evidence of management, workman himself left job cannot be believed. Apparently services of workman were terminated without notice not paying retrenchment compensation is in violation of Section 25-F of I.D.Act. For above reasons, I record my finding in Point No.1 in Negative.

7. **Point No.2-** in view of my finding in Point No.1 that service of workman are terminated in violation of Section 25-F of I.D.Act, question arises whether workman is entitled for reinstatement with back wages. Workman has worked on daily wages from 1983 to August 1985 for about 2 years. Learned counsel for workman relies on ratio held in

Case of Bhuvnesh Kumar Dwivedi Versus Hindalco Industries Ltd. reported in 2014(2) SCC (L&S) 437. In above cited case, Labour Court held appellant entitled to reinstatement with back wages and other consequential benefits. Hon'ble High Court substituted with award of Rs. 1 Lakh as damages to be paid to the appellant workman.

The facts of above case are not comparable as workman in above cited case have completed 6 years continuous service. In present case, workman hardly worked for about 2 years.

Next reliance is placed n ratio held in Kishorilal Prajapati and Others Versus State of MP and Others reported in 2013(1) MPLJ 463. The ratio in the case is on the point of classification of employee if an employee is said to have remained worked in one calendar year for 240 days or more in one post, he is said to be entitled for classification on the said post.

The ratio held in above case has no direct bearing on the point of relief to be granted for retrenchment in violation of Section 25-F.

8. Considering facts and period of working in present case, in my considered view, workman who was engaged on daily wages for about 3 years cannot be allowed reinstatement with back wages. The compensation Rs. 50,000/- would be adequate and reasonable. Accordingly I record my finding in Point No.2.

9. In the result, award is passed as under:-

(1) The action of the management of Central Railway Bhopal in terminating the services of Shri Nandkishore S/o Shri Puttu Lal w.e.f. 19-8-85 is not legal and proper.

(2) IInd party is directed to pay compensation Rs. 50,000 within 30 days from the date of publication of award.

Amount as per above order shall be paid to workman within 30 days from the date of notification of award. In case of default, amount shall carry 9 % interest per annum from the date of award till its realization.

R. B. PATLE, Presiding Officer

नई दिल्ली, 1 जनवरी, 2015

का.आ. 70.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्टेट बैंक ऑफ इंदौर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 39/07) को प्रकाशित करती है जो केन्द्रीय सरकार को 23-12-2014 को प्राप्त हुआ था।

[सं. एल-12012/215/2004-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 1st January, 2015

S.O. 70.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 39/07)

of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of State Bank of Indore and their workmen, received by the Central Government on 23/12/2014.

[No. L-12012/215/2004-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/39/07

PRESIDING OFFICER: SHRI R.B. PATLE

Shri Suresh Jain, Secretary,
State Bank of Indore Employees Union,
5, Yeshwant Niwas Road,
Indore (MP) ...Workman/Union

Versus

The Assistant General Manager (III),
State Bank of Indore, Zonal Office,
163, Kanchanbagh
Indore (MP) ...Management

AWARD

(Passed on this 11th day of December, 2014)

1. As per letter dated 9-4-07 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-12012/215/2004-IR(B-I). The dispute under reference relates to:

> "Whether the action of the management of State Bank of Indore, Regional Office, Indore (MP) in not granting EL, Medical Leave & increment after re-employing the workman Shri Bhagchand Sawani in persuance of CGIT award dated 18-10-01 passed in Case No. R/81/92 is legal and justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Even after issuing notices, the Union did not participate in the proceeding, no statement of claim is filed. Ist party is proceeded exparte on 13-8-14.

3. IInd party management also not filed Written Statement. From conduct of the parties, it is clear that the parties are not pursuing or participating in the dispute.

4. In the result, award is passed as under:-

> " Reference is disposed off as No Dispute Award for failure of parties to participate in reference proceeding".

R. B. PATLE, Presiding Officer

नई दिल्ली, 1 जनवरी, 2015

का.आ. 71.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, जबलपुर के पंचाट (संदर्भ संख्या 74/98) को प्रकाशित करती है, जो केन्द्रीय सरकार को 23-12-2014 को प्राप्त हुआ था।

[सं. एल-41012/198/97-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 1st January, 2015

S.O. 71.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 74/98) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the industrial dispute between the management of Central Railway and their workmen, received by the Central Government on 23/12/2014.

[No. L-41012/198/97-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/74/98

Shri Premlal Tirra,
Salaiya Station,
PO Amgawan Tahsil
Distt. Katni ...Workman

Versus

Divisional Railway Manager,
Central Railway,
Jabalpur ...Management

AWARD

(Passed on this 4th day of December, 2014)

1. As per letter dated 29-4-98 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No.L-41012/198/97-IR(B-I). The dispute under reference relates to:

> "Whether the action of the Divisional Railway Manager, Central Railway, Jabalpur in terminating the services of Shri Premlal Tirra, YKC, Loco, Katni w.e.f. 10-6-85 is legal and justified? If not, to what relief the concerned workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Workman submitted statement of claim at

Page 2/1 to 2/4. Case of workman is that he was appointed as YKC on 1-6-78 at Loco Katni. He was working on such post till removal of service i.e. 10-6-85. He completed 7 years service. He further submits that for guilt of unauthorized absence during the period 9-2-83 to 14-12-84 for absence of 52 days, he was removed from service. He further submits that one day enquiry was conducted, he was not given opportunity for his defence, no chance for cross-examination of management witness was given to him. He was not given opportunity to conduct enquiry due to removal from service. That appeal preferred by him challenging removal from service was not replied. He raised dispute before ALC, Jabalpur. After failure report, matter have been referred.

3. Workman further submits that the punishment of removal was imposed against him is harsh. The absence from duty is not covered as misconduct. There is no provision in Discipline Appeal Rules of Railway to impose punishment of removal of absence from duty. That there may be other lesser punishment for such act. He further submits that enquiry was need without giving chance to engage counsel for his defence. The punishment is illegal. On such ground, he prays for setting aside order of removal and reinstatement with back wages.

4. IInd party submitted Written Statement at Page 4/1 to 4/2 opposing claim of workman. IInd party submits that workman cannot question his removal from service after 13 years. That workman allowed order of his removal to receive finality. The reference is bad for latches. IInd party submits that workman was served with chargesheet for major penalty on 11-2-85. He was given opportunity to nominate Defence Assistant but workman did not avail it. Enquiry Officer was appointed. Workman appeared in the enquiry and admitted charges of unauthorised absence. Enquiry Officer submitted his report on the basis of findings of Enquiry Officer, Disciplinary Authority imposed penalty of removal of service is illegal. Appellate authority also did not find substance in his appeal. The appeal was rejected. It is denied that workman was not given opportunity for his defence. It is reiterated that the workman admitted charges on Ist day of enquiry. On such ground, IInd party prays that reference be answered in its favour.

5. Workman submitted rejoinder at Page 6/1 to 6/4 reiterating his contentions in statement of claim. That he was not given reasonable opportunity for his defence in Enquiry Proceedings. That his wife was suffering from illness. He submitted in writing before Enquiry Officer and requested for mercy and sympathy. However his submissions were not considered. That removal of his service is not improper.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below:-

"(i)	Whether the action of the Divisional Railway Manager, Central Railway, Jabalpur in terminating the services of Shri Premlal Tirra, YKC, Loco, Katni w.e.f. 10-6-85 is legal and justified?	In Negative
(ii)	If not, what relief the workman is entitled to?"	As per final order.

REASONS

7. Workman has challenged order of his removal from service. Pleading that he was not given reasonable opportunity in enquiry. Management denied those contentions. The legality of enquiry was decided by my predecessor vide order dated 3-7-09. Enquiry conducted against workman was found not proper and legal. Management of IInd party was permitted to prove misconduct by adducing evidence. Workman Premlal had filed affidavit of his evidence on preliminary issue. He was also cross-examined. Issue is already decided by my predecessor holding that enquiry is not proper and legal. Therefore observation of evidence of workman is not required.

8. Management filed affidavit of evidence of witness Shri S.K.Agrawal. Management's witness says workman was absent from duty without reasons for 52 days during period of one year. For such act of unbecoming of Railway Servant, chargesheet was issued to workman on 11-2-1985. After receiving chargesheet, workman submitted reply on 23-2-85. He further says that before Enquiry Officer, workman unequally admitted charges of remaining unauthorized absence. Accordingly Enquiry Officer recorded findings. The order of removal passed by Disciplinary Authority was confirmed in appeal. The evidence of management's witness is on the point of holding enquiry and on the charge against workman. Enquiry also held not legal and proper. Management's witness in his cross-examination says that chargesheet was issued to workman in 1985. Delinquent had submitted Medical Certificate of illness of his wife for his alleged unauthorized absence. Witness said the documents are not considered. Evidence of management's witness is not specific about the period of unauthorized absence of the workman. Counsel for management Shri S.Mishra at the time of argument submits the details of appointment of workman and termination and the order of reference. Dispute raised in 1988 after lapse of long time. Learned counsel emphasized that considering the delay, reinstatement may not be allowed. Age of workman was 48 years when he filed affidavit of his evidence on 23-5-07. Workman must have attained age of 55 years. The evidence of management's witness is not cogent that absence of workman for 52 days was unauthorized. The

witness of management is claiming ignorance about the medical certificate submitted by workman considered by Disciplinary Authority or not. The punishment of removal from service for absence of 52 days cannot be said proper. Therefore the order of removal from service of workman cannot be sustained. For above reasons, I record my finding in Negative.

9. **Point No.2-** In view of my finding in Point No.1, punishment of dismissal of workman for absence from duty for 52 days cannot be said proper. Question arises whether workman is entitled for reinstatement with backwages. The dispute is raised after 13 years after punishment of removal was imposed. Considering those aspects, reinstatement without backwages would be appropriate. Accordingly I record my finding in Point No. 2.

10. In the result, award is passed as under:-

(1) The action of the Divisional Railway Manager, Central Railway, Jabalpur in terminating the services of Shri Premlal Tirra, YKC, Loco, Katni w.e.f. 10-6-85 is legal and proper.

(2) IInd party is directed to reinstatement with continuity of service but without back wages.

R. B. PATLE, Presiding Officer

नई दिल्ली, 1 जनवरी, 2015

का.आ. 72.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तर मध्य रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, कानपुर के पंचाट (संदर्भ संख्या 14/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-12-2014 को प्राप्त हुआ था।

[सं. एल-41012/168/2004-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 1st January, 2015

S.O. 72.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 14/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Kanpur as shown in the Annexure, in the industrial dispute between the management of North Central Railway and their workmen, received by the Central Government on 31/12/2014.

[No. L-41012/168/2004-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

BEFORE SRI RAM PARKASH, HJS, PRESIDING OFFICER, CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOR COURT, KANPUR

Industrial Dispute No. 14 of 2005

Between :

Shyam Singh,
Son of Sri Jimipal,
Village Bhandari,
PO Amour,
District Firozabad

And

The Divisional Railway Manager,
North Central Railway,
DRM Office,
Allahabad

AWARD

1. Central Government, MoL, New Delhi, vide notification no.L-41012/168/2004-IR (B-1) dated 29.04.05, has referred the following dispute for adjudication to this tribunal :

2. Whether the action of the management of Divisional Railway Manager, NCR, Allahabad in terminating the services of Sri Shyam Singh, Gangman son of Sri Jimipal with effect from 20.01.2000 is just and fair and legal and if not what relief the workman concerned is entitled to?

3. Brief facts are –

4. It is an admitted fact that the claimant Sri Shyam Singh was employed as a Gangman with gang no.96 under Section Engineer (P.Way) Khurja Junction.

5. It is averred by the claimant that when he was on duty, he got the information of serious illness of his wife, as there was no section engineer at the spot so he informed the mate and proceeded on leave. Reaching home he found that his wife has suffered a serious paralytic attack so he remained engaged in the treatment of his wife with effect from 22.10.98 to 24.05.99. Thereafter he was permitted to join the duty. All of a sudden he came to know that a charge sheet SF-5 has been issued by the department date 25. 05.99, though the copy of the same has not been given to the workman.

6. Opposite party has conducted a flimsy inquiry without seeking any explanation from him as well as no evidence was recorded in the presence of the workman. He was not informed about the enquiry proceedings and the inquiry was completed behind his back. Inquiry report was submitted on 29.12.99. Based on the inquiry report without issuance of second show-cause notice he was removed from service on 20.01.2000. He also preferred an appeal but appeal was failed.

7. It is therefore, prayed by the claimant that the dismissal order and appellate order be set aside and he be reinstated in service with full back wages, seniority and all consequential benefits.

8. The claim of the workman was refuted on a number of grounds by the management. It is claimed by them that the claimant was charged for remaining unauthorized absence from duty without any information and leave application. He was given, every information regarding the progress of inquiry, he was given full opportunity by the inquiry officer, but the claimant refrained from the inquiry deliberately and did not cooperate with the inquiry. After giving all probable opportunity for his defense the disciplinary and the appellate authority passed a reasoned order. Therefore, the claim of the claimant is merit less and his claim is liable to be dismissed and accordingly he is not entitled for any relief.

9. Both the parties have adduced documentary evidence.

10. Workman has filed 14 papers vide list 7/1. These papers are paper no.7/2-28. These are the papers relating to the inquiry.

11. Opposite party has filed paper no.16/2-12, which includes the copy of SF-5, copy of inquiry report, and other papers.

12. Claimant has adduced himself in evidence as W.W.1.

13. In this case a preliminary issue regarding fairness of inquiry was framed.

14. This issue was decided by me vide a detailed order dated 17.07.2012, where under it was found that the domestic inquiry conducted by the management is not just and fair. Even thereafter the opposite party was permitted to prove the charges before the tribunal against the workman.

15. Initially the burden lies on the shoulder of the management to prove the charges. They were given several opportunities to produce documentary as well as oral evidence in support of the charges and inquiry. When they miserably failed the opportunity to lead the evidence by the management was closed. Thereafter the workman himself produced as a witness and he stated on oath the whole aversion made in his claim statement stating specifically that due to serious illness of his wife he had to remain at his home for taking her medical care. As soon as his wife gets cured he went at the place of his duty and he was permitted to join his duties by the Railway Administration. But suddenly it was made known to him that he was removed from the service of the department with effect from 20.01.2000. It was also stated by him that no charge sheet was ever issued to him and that he has no knowledge of departmental proceedings held against him. Inquiry was held in a closed door room and he was also not issued second show cause notice prior to termination. His appeal was also dismissed without application of proper mind.

16. Opposite did not produce any evidence in support of the charges. Opposite party did not cross examine the workman who has given his statement on oath, therefore, his evidence is un-rebutted.

17. Opposite party has filed certain documents but the original of the same have not been filed. No sanctity can be accorded to these papers unless proved by the opposite party producing the original as well as giving oral evidence in support of the documents.

18. Therefore, these papers cannot be given any sanctity.

19. Preliminary issue has already been decided against the management. Therefore, considering all the facts and circumstances of the case, I am of the view that management has failed to establish the charges as asserted in SF-5 against the workman.

20. Therefore, the action of the management cannot be termed as just and fair. In consequence the workman is entitled for his reinstatement in service. Hence the opposite party is directed to reinstate the workman with 25% of back wages from the date of his removal. He will also be entitled for all consequential benefits available to him. However for the absence period for 22.10.98 to 24.05.99, it is directed that if the workman has earned leave in his credit then he may be granted earned leave.

21. Accordingly reference is answered in favor of the workman and against the management.

Dated : 20.11.2013

RAM PARKASH, Presiding Officer

नई दिल्ली, 1 जनवरी, 2015

का.आ. 73.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार स्माल इंडस्ट्रीज डवलपमेंट बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 55/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-12-2014 को प्राप्त हुआ था।

[सं. एल-12011/36/2013-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 1st January, 2015

S.O. 73.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 55/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Small Industries Development Bank of India and their workmen, received by the Central Government on 31/12/2014.

[No. L-12011/36/2013-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 55/2013

Ref. No. L-12011/36/2013-IR(B-I) dated 08.08.2013

BETWEEN :

All India Small Industries Development
Bank Employees Association
Through Secretary Lucknow Unit
SIDBI Tower, 15, Ashok Marg,
Lucknow

AND

1. The Chairman & Manager Director
Small Industries Development Bank of India,
SIDBI Tower, 15 Ashok Marg,
Hazratganj,
Lucknow (U.P.)

2. General Manager (H.R. Vertical)
Small Industries Dev. Bank of India,
SIDBI Tower, 15 Ashok Marg,
Lucknow

AWARD

1. By order No. L-12011/36/2013-IR(B-I) dated 08.08.2013 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between All India Small Industries Development through Secretary, Lucknow Unit, SIDBI Tower, 15, Ashok Marg, Lucknow and the Chairman & Managing Director and General Manager (H.R. Vertical) Small Industries Development Bank of India, SIDBI Tower, 15, Ashok Marg, Lucknow for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF SIDBI, LUCKNOW IN NOT FILLING UP VACANCIES OF CLASS III EMPLOYEES, CONSEQUENT UPON PROMOTION OF CLASS-III EMPLOYEES ACCORDING TO BI-PARTITE SETTLEMENT DATED 08.09.2001 IS JUST FAIR & LEGAL? TO WHAT RELIEF THE CONCERNED UNION IS ENTITLED?"

3. The order of reference was endorsed to the Secretary, All India Small Industries Development Bank Employees Union, Lucknow SIDBI Tower, 15, Ashok Marg, Lucknow with the direction to the party raising the dispute to file the statement of claim along with relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of the order of reference and also forward a copy of such a statement to each one of the opposite parties involved in this dispute under rule 10 (B) of the Industrial Disputes (Central), Rules, 1957.

4. The order of reference was registered in the Tribunal on 27.08.2013 and notice was issued for filing statement of claim by the workman.

5. The workman did not file statement of claim. Several dates i.e. 26.05.2014, 17.07.2014, 27.08.2014, 27.10.2014 and 05.12.2014 were fixed for filing statement of claim but parties did not turn up. On 05.12.2014 workmen counsel Sri Santosh Kumar Tripathi filed a application W-8 for withdrawal of the case because grievances of the workmen have been redressed with mutual consent.

6. Under the circumstances and the facts mentioned herein, no relief is legally required to be given to the applicants/workmen. The reference under adjudication is answered as NO CLAIM AWARD.

7. Award as above

LUCKNOW
06.12.2014

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 1 जनवरी, 2015

का.आ. 74.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 05/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-12-2014 को प्राप्त हुआ था।

[सं. एल-41011/101/2009-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 1st January, 2015

S.O. 74.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 05/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Uttar Railway and their workmen, received by the Central Government on 31/12/2014.

[No. L-41011/101/2009-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 05/2011

Ref. No. L-41011/101/2009-IR(B-I) dated : 04.01.2011

BETWEEN:

Mandal Sangatan Mantri
Uttar Railways Employee Union
283/63, Kh Gadi Kannora
(Premvati Nagar), PO. Manak Nagar
Lucknow

(Espousing cause of Shri Baldev & 19 others)

AND

1. Dy. Chief Engineer (Construction)
Uttar Railway, Charbagh,
Lucknow

2. Dy. Chief Manager (Stores)
Uttar Railway Stores Dipo, Alambagh
Lucknow.

AWARD

1. By order No. L-41011/101/2009-IR(B-I) dated: 04.01.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Sangatan Mantri, Uttar Railways Employee Union, 283/63, Kh Gadi Kannora, (Premvati Nagar), PO. Manak Nagar, Lucknow and the Dy. Chief Engineer (Construction), Uttar Railway, Charbagh, Lucknow & Dy. Chief Manager (Stores), Uttar Railway Stores Dipo, Alambagh, Lucknow to this CGIT-cum-Labour Court, Lucknow for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF MANAGEMENT OF NORTHERN RAILWAY, LUCKNOW IN NOT GIVING STATUS OF TEMPORARY WORKER TO THE EMPLOYEES MENTIONED IN ANNEXURE-A, FROM THE DATE OF COMPLETION OF 120 DAYS OF SERVICE IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE WORKMAN IS ENTITLED?"

3. The case of the workmen's union, in brief, is that the workmen, Baldev and 19 others, have been engaged as casual labour with in construction unit under opposite party No. 1 and are presently working under opposite party No. 2. It has been alleged by the workmen's union that the workmen under dispute were to be given temporary status after completion of 120 days of working as per P.S. N. 7850, Master Circular 48/92 and Rule 2304, 2501 and 2511 of Indian Railway Establishment Manual; but they were granted temporary status after five years' of their engagement, which is not only unfair labour practice but also is against Article 21 of the Constitution. Accordingly, the workmen's union has prayed that the workmen concerned be granted temporary status from the date they have completed 120 days' working with consequential benefits.

4. The management of the Northern Railways has filed its written statement denying the allegations of the workmen's union with submission that the workman under dispute were initially engaged by them as Project Casual Labour in Construction Unit with intermittent gap. They have been granted temporary status as per working mentioned in their casual labour card vide Railway Board's letter dated 01.06.84, which was modified vide Board's letter dated 11.09.86 as per directions of Hon'ble Apex Court in Inder Pal Yadav & Others Vs. Union of India & Others (1985) 2 SCC 648. The management has given a detailed list of date of engagement of the casual labours with their modified/revised date of grant of temporary status. The management has submitted that as per modified date of grant of temporary status, the workmen were screened and posted as Group-D employees on different posts and are in fruitful employment of the opposite party for last 20 years, thus, raising the present industrial disputes after lapse of 20 long years makes it time barred hence, not maintainable in the eye of law. It is specifically submitted by the management that the workmen have been engaged as project casual labour and as per existing Railway Rules 360 days' continuous service is required for grant of temporary status, therefore, the claim of the workmen for grant of temporary status after 120 days is not maintainable and liable to be rejected. Accordingly, the management has prayed that the claim of the workmen's union be rejected being devoid of any merit.

5. The workmen's union has filed its rejoinder wherein apart from reiterating facts already mentioned in the statement claim has submitted that the workmen under dispute have not been appointed in any project, therefore, decision of Hon'ble Apex Court in Inder Pal Yadav case (Supra) is not applicable on them and they should be granted temporary status after completion of 120 days of service.

6. The workmen's union has not filed any documentary evidence in support of his claim; rather it has stated that the Casual Labour Card in respect of the workmen and their service book is with the employers, in original.

The management has filed photocopy of Casual Labour Card and Service Book in respect of all the workmen vide application dated 09.01.2012.

7. The workmen's union has examined workmen viz. S/Sri Baldev, Sudhanshu Pandy, Ram Karan, Chatragun Pal, Shiv Narayan, Dwarika Singh, Ram Prakash, Sudan, Devendera Nath, Gajpal Singh, Chote Lal, Bhagwat, Sri Krishna, Johan Lal, Kailash, Ram Awadh, Kishan Chandra, Chedi Lal, Chet Ram, and Sri Nand; whereas the management examined Sri Sita Ram Sonkar, APO in support of their claim. The parties availed opportunity to cross-examine the each other's witnesses apart from putting oral arguments as well as written arguments.

8. Heard learned authorized representatives of the parties and perused entire evidence on record.

9. The authorized representative of the workmen has contended that the workmen under dispute were not project casual labour; rather they were casual labour engaged in construction division/unit. Therefore, they were eligible for grant of temporary status from the date they completed 120 days of service. The Railway Administration instead treated them as project casual labour and granted them temporary status after lapse of five years which is unfair labour practice. It is also contended that the decisions of the Hon'ble Supreme Court in Indra Pal Yadav case (Supra) is not applicable on them. The workmen have relied on:

(i) Union of India Vs. Presiding Officer, CGIT-cum-Labour Court, Kanpur Nagar & another 2008(116) FLR 1046.

(ii) Union of India & others Vs. Basant Lal & others 1992 SCC (L&S) 611.

(iii) L. Robert D'Souza Vs. Executive Engineer, Southern Railway & another 1982 SCC (L&S) 124.

(iv) N. Balakrishnan Vs. M. Krishnamurthy ACJ 1998 1347 SC.

(v) Kuldeep Singh Vs. GM, Instrument Design Development and Facilities Centre & another 2011 (128) FLR 121.

(vi) Din Mohammed (Dead) by LRs. Vs. Union of India & others 2002 (92) FLR 1216.

(vii) The Union of India & another Vs. Girja Shankar & others 2003 (96) FLR 1094.

10. In rebuttal, the authorized representative of the management has contended that the workmen have been project casual labour in construction unit and worked with intermittent gap and they were granted temporary status as per Railway Board's letter dated 01.06.84. It has been submitted that the Railway Board vide its letter dated 11.09.86 modified the date of temporary status to the workmen in view of decision given by Hon'ble Supreme Court in Indra Pal Yadav case (Supra). The management has contended that the workmen were not entitled for grant of temporary status after completion of 120 days continuous service since they were engaged as project casual labour and as per existing Railway Rules, 360 days' continuous services is required for grant of temporary status to a project casual labour. The authorized representative of the management has also contended that the workmen have turned up after lapse of more than 20 years and their cause is not tenable in the eye of law being time barred. The management has relied on Inder Pal Yadav & Others Vs. Union of India (1985) 2 SCC 648.

11. I have given my thoughtful consideration to the rival submissions of the learned authorized representatives of the parties and scanned entire evidence on record in light thereto.

12. The workman has come up with a case that he has been engaged as casual labour in the Construction Unit of the Dy. Chief Engineer (Construction), Northern Railway, Lucknow and they were entitled for grant of temporary status on completion of 120 days of service under P.S. N. 7850, Master Circular 48/92 and Rule 2304, 2501 and 2511 of Indian Railway Establishment Manual; but the management granted them temporary status after five years' of their appointment, amounting to unfair labour practice. The workmen's union has not filed any documentary evidence in support of their case; rather it has pleaded that the same is in power and possession of the Railways.

13. The management of the Northern Railways, rebutting the claim of the workmen's union has come up with a clear cut case that the workman had been engaged as Project Casual Labour and accordingly, they were entitled for grant of temporary status on completion of 360 days continuous service; and accordingly, they were grated vide Railway Board's letter dated 01.06.84. Later on with decision of Hon'ble Apex Court in Inder Pal Yadav case (Supra), the date of grant of temporary status was modified vide Railway Board's letter dated 11.09.86 whereby the workmen were given temporary status from previous date. The management has also stressed upon the facutm of delay in raising the present industrial dispute after lapse of more than 20 years. The authorized representative of the management has pointed out that the workmen in the dispute are working with the Railways for decades; but neither they preferred any representation, on the issue; nor moved to the court for redressal of their grievances. Moreover, many of them have got retired; and most of them are at the verge of retirement, when they have raised the present industrial dispute at a highly belated stage without any explanation to the delay. It has also been argued that though there is no limitation in the I.D. Act, 1947; but the same should not be condoned for the want of any explanation from the workmen's union. He has also submitted that the Hon'ble Apex Court in number of its verdicts has observed that Courts should exercise their discretion, judiciously, while condoning the delay.

14. The workmen's union has adduced evidence of all the workmen under dispute who stated in their cross-examination that the management revised their date of grant of temporary status and made an entry to the effect in their service record. Also, they admitted that they have not raised any dispute before any forum for grant of temporary status on completion of 120 days of service. All of the workmen admitted the photocopy of service record and casual labour card, filed by the management, from paper No. M-27 to 46/6.

On the contrary, the management witness in his cross-examination has stated that the workmen under

question were transferred to his unit from Construction Unit.

15. The workman has not filed any documentary proof in support of their claim but has relied on the photocopy of the service record and casual labour card of the workmen, filed by the management. The service record of the workman shows the entry regarding grant of temporary status to the workman of different dates and there after grant of revised temporary status from different dates as per Railway Board's circular dated 11.9.86. The photocopy of the casual labour card, filed by the management has details regarding working of the workmen with Permanent Way Inspector (Construction) at different-different stations.

Thus, both the parties have relied on the same set of documents in support of their different stands.

16. After going through the rival pleadings of the parties and documentary and oral evidence relied upon by the parties the bone of contention is as to whether the workmen were Project casual labour or just casual labour engaged in the Railway Administration. Had they been Project Casual Labour then the action of the management was right and if they were casual labour on the rolls of railways then they ought to have been granted temporary status on completion of 120 days continuous service.

The burden that lied upon the workmen's union was to come with the evidence that such and such workman was engaged as casual labour and he completed 120 days continuous service on such and such date, making him entitled for grant of temporary status. Thus, it was for the workmen's union to lead its evidence on two points firstly that the workmen were engaged as Casual Labour and secondly that they completed 120 days' of continuous working on such and such date. But the workman failed to comply with the above requirement. As it relied on the documentary evidence i.e. casual labour card which was in power and possession of the management for working detail; but when the management filed the photocopy of the same then it neither calculated the 120 days' continuous working from it nor disputed its genuineness. This goes to upheld the stand taken by the management that the workmen were Project Casual Labour and accordingly they were granted temporary status on completion of 360 days' of continuous working vide Railway Board's letter dated 01.06.84 and thereafter granted them revised temporary status from a back date vide letter dated 11.09.86 as per guidelines of Hon'ble Apex Court.

17. The workman has relied on Union of India Vs. Presiding Officer, CGIT-cum-Labour Court, Kanpur Nagar & another which pertains to termination of services of a workman in violation of provisions of Section 25 F, G & H of the Act. However, the facts of the present case are entirely different; hence not applicable in the present case. The workman has also relied on Union of India & others Vs. Basant Lal & others 1992 SCC (L&S) 611; wherein the Hon'ble Apex Court has held that a workman having completed 120 days of working becomes entitled for regularization as temporary worker and the Railway cannot deny them the temporary status on the ground that they had been appointed as causal labour on a project work and not on construction work on open line and as such they would acquire the temporary status only after completing 360 days of service. But in the present case the workmen's union failed to specify the date when the different workmen completed 120 days' of continuous service, rendering them for grant of temporary status. The workmen's union has also relied on L. Robert D'Souza Vs. Executive Engineer, Southern Railway & another 1982 SCC (L&S) 124 but the fact of the case law is entirely different from the present case hence not applicable. Likewise the facts of the case law relied upon by the workman in the Union of India & another Vs. Girja Shankar & others 2003 (96) FLR 1094, Kuldeep Singh Vs. GM Instrument Design Development and Facilities Centre & another 2011 (128) FLR 123 and Din Mhammaed (Dead) by LRs. Vs. Union of India & others 2002 992) FLR 1216 are quite different from the facts of the present case hence not appreciable.

18. It is well settled that if a party challenges the legality of an action, the burden lies upon him to prove illegality of the action; and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case burden was on the workmen's union to set out the grounds to challenge the validity of the action of the management in not granting the temporary status to the workman after completion of 120 days' of continuous working. For this the burden of proof was on the workman's union to come with the evidence, that the workmen under dispute have been engaged by the management of Northern Railway as casual labour and under Rules they were entitled for grant of temporary status from completion of 120 days services with the employers; but the workman's union has failed to discharge the burned that lied upon them. The workman made a pleading, to explain the reason why they are not in position to file any documentary evidence before this Tribunal, in their statement of claim of the effect that the relevant document in support of their claim i.e. Casual Labour Card is attached in their Service Book. The workmen's union in its rejoineder required the management to produce Casual Labour Card in respect of the workmen before this Tribunal, resultantly, the management filed photocopy of Casual Labour Card and Services Book in respect of each of the workman under dispute. The workmen's union did not dispute the services details filed by the management i.e. Casual Labour Card and extracts of Service Book. Therefore, when the management has field the photocopy of Casual Labour Card as desired by the workmen's union then it was incumbent upon the workmen's union to come forward and sort out the relevant extract of the Casual Labour Card, which bears working details i.e. working period and number of days, to show that the workmen

completed 120 days of continuous on such and such date and they were entitled for grant of temporary status from such date. But the workmen have utterly failed to being any evidence to the effect before this Tribunal that the workmen were engaged as Causal Labour and that the workman was casual labour and it also failed to specify the date as to when a particular workman completed 120 days' of continuous working, making him eligible for grant of temporary status.

19. On the contrary the management has come with a clear cut case that the workmen under dispute were engaged as Project Casual Labour with Construction Unit. It is also contended by the learned authorized representative of opposite party that there are so many projects which go on with the Construction Unit and the workmen were kept engaged in different Projects. It is also specifically pleaded and proved by the management that the workmen were granted temporary status vide Railway Board's letter dated 01.06.84; but due to Supreme Court's direction in Indra Pal Yadav Case (supra), the Railway Board vide its letter dated 11.09.86, changed the date of grant of temporary status, as per modified policy and accordingly, reduced the date of Temporary Status through notice. The management has filed photocopy of Service Record in respect of workmen, which bears entries regarding grant of temporary status to each workman vide letter dated 01.06.84 and thereafter temporary status from modified, previous date, vide letter dated 11.09.86.

20. The management has made a specific pleading to the effect that the claim of the workmen's union is stale one and time barred as the union has preferred the case before this Tribunal after lapse of more than 20 years. The workman's union in rebuttal has submitted hat there is no provision regarding limitation in the Industrial Disputes Act, 1947; hence their claim is maintainable.

In this regard the workmen's union has relied on N. Balakrishnan vs M. Krishnamurthy 1998 ACJ 1347; wherein Hon'ble Apex Court while dealing with the matter delay has observed that length of delay no matter, acceptability of the explanation is the only criterion. But the workmen's union has not given any explanation in its pleadings as to what prevented them to raise an industrial dispute at an early state. However, in the evidence it has been stated that the workman/union wrote many letters to the opposite parties and the same are pending with them; although no copy of such letter/representation finds its reference either on record or annexure with the affidavit; and also, on the contrary all the workmen in their cross-examination hve stated that they have not filed any case before any other forum on this issue. Moreover, the management witness vide para 8 of his affidavit has denied of submissions of any such application by the workmen.

In Chennai Metropolitan Water Supply and Sewerage Board & Others Vs T.T. Murali Babu 2014 (141) FLR 772, Honble Apex Court has observed as under:

> "The Court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a Constitutional Court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the Court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring a hazard and causes injury to the lis. In the case at hand, though there has been four years' delay in approaching the Court, yet the writ Court chose not to address the same. It is the duty of the Court to scrutinize whether such enormous delay is to be ignored without any justification. "

Further, in Dr. Jawahar Lal Rohatgi Memorial Eye Hospital vs State of U.P. & others 2013 (138) FLR 11 Hon'ble Allahabad High Court upholding the action of the State Government in denying the making reference of case after 22 years held that it is not expedient for State government to refer against order of termination dated 26.6.1982 being old and stale case, where the workman filed an application raising industrial dispute after 22 years in 2004. Hon'ble High Court observed that there is nothing to indicate as to why the workman could not approach the authority under the ID Act.

Thus, from the face of record it is crystal clear the workmen did not bother to approach the management or any legal forum for redressal of their grievances for more than 20 years; and the explanation forwarded by the workmen's union before this Tribunal is insufficient.

21. Hence, from the facts and circumstances of the case and law cited hereinabove; I am of considered opinion that the action of the management of Northern Railway, Lucknow in not giving temporary status to the workmen, mentioned in the Annexure-A from the alleged date of completion of 120 days of service is neither illegal nor unjustified. Accordingly, I come to the conclusion that the workmen, mentioned in Annexure-A, are not entitled to any relief.

22. The reference under adjudication is answered accordingly.

23. Award as above.

LUCKNOW
06th December, 2014

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 1 जनवरी, 2015

का.आ. 75.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार उत्तर रेलवे के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण, लखनऊ के पंचाट (संदर्भ संख्या 25/2010) को प्रकाशित करती है जो केन्द्रीय सरकार को 31-12-2014 को प्राप्त हुआ था।

[सं. एल-41011/129/2009-आईआर (बी-I)]

सुमति सकलानी, अनुभाग अधिकारी

New Delhi, the 1st January, 2015

S.O. 75.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 25/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Lucknow as shown in the Annexure, in the industrial dispute between the management of Uttar Railway and their workmen, received by the Central Government on 31/12/2014.

[No. L-41011/129/2009-IR (B-I)]

SUMATI SAKLANI, Section Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM- LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 25/2010

Ref. No. L-41011/129/2009-IR(B-I) dated: 09.11.2010

BETWEEN :

Mandal Sangatan Mantri
Uttar Railways Krmchari Union
283/63, Kh Gadi Kannora,
PO. Manak Nagar,
Lucknow

(Espousing cause of Shri Mahesh)

AND

1. Dy. Chief Engineer (Construction)
   Uttar Railway, Charbagh,
   Lucknow.
2. Dy. Chief Manager (Stores)
   Uttar Railway, Stores Depot, Alambagh,
   Lucknow.

AWARD

1. By order No. L-41011/101/2009-IR(B-I) dated: 09.11.2010 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Mandal Sangatan Mantri, Uttar Railways Employee Union, 283/63, Kh Gadi Kannora, PO. Manak Nagar, Lucknow and the Dy. Chief Engineer (Construction), Uttar Railway, Charbagh, Lucknow & Deputy Chief Manager (Stores), Northern Railway, Stores Depot, Alambagh, Lucknow to this CGIT-cum-Labour Court, Lucknow for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF MANAGEMENT OF NORTH CENTRAL RAILWAY, ALLAHABAD/ KANPUR IN NOT GIVING SHRI MAHESH, T.NO. 580 STATUS OF TEMPORARY WORKERFROM THE DATE OF COMPLETION OF 120 DAYS OF SERVICE IS LEGAL AND JUSTIFIED? TO WHAT RELIEF THE WORKMAN IS ENTITLED?"

3. The case of the workman's union, in brief, is that the workman, Mahesh, has been engaged as casual labour with in construction unit under opposite party No. 1 and is presently working under opposite party No. 2. It has been alleged by the workman's union that the workman under dispute was to be given temporary status after completion of 120 days of working as per P.S. N. 7850, Master Circular 48/92 and Rule 2304, 2501 and 2511 of Indian Railway Establishment Manual; but they were granted temporary status after five years' of their engagement, which is not only unfair labour practice but also is against Article 21 of the Constitution. Accordingly, the workman's union has prayed that the workmen concerned be granted temporary status from the date they have completed 120 days' working with consequential benefits.

4. The management of the North Central Railways has filed its written statement denying the allegations of the workman's union with submission that the workman under dispute was initially engaged by them as Project Casual Labour in Construction Unit with intermittent gap w.e.f. 24.04.79 and has been granted temporary status on 01.01.85 vide letter No. 220-E/3/Recruit dated 22/25.02.85. It has been submitted that the railway formulated a scheme to provide the temporary status to Project Casual Labour, circulated vide No. E(NG)II/84/CL/41 dated 1.6.84 as per directions of Hon'ble Apex Court in Inder Pal Yadav & others vs Union of India & others (1985) 2 SCC 648. The management has submitted that as per modified date of grant of temporary status, the workmen were screened and posted as Gangman and is in fruitful employment of the opposite party for last 20 years, thus, raising the present industrial disputes after lapse of 20 long years makes it time barred hence, not maintainable in the eye of law. It is specifically submitted by the management that the workman has been engaged as project casual labour and as per existing Railway Rules 360 days' continuous service is required for grant of temporary status, therefore, the claim of the workmen for grant of temporary status after 120 days is not maintainable and liable to be rejected.

Accordingly, the management has prayed that the claim of the workman's union be rejected being devoid of any merit.

5. The workman's union has filed its rejoinder wherein apart from reiterating facts already mentioned in the statement claim has submitted that the workman under dispute has not been appointed in any project, therefore, decision of Hon'ble Apex Court in Inder Pal Yadav case (supra) is not applicable on him and he should begranted temporary status after completion of 120 days of service.

6. The workman's union has not filed any documentary evidence in support of its claim; rather it has stated that the Casual Labour Card in respect of the workman and his Service Book, is with the employers, in original.

The management has filed photocopy of Casual Labour Card and Service Book in respect of workman vide application dated 29.03.2012.

7. The workman's union has examined workman; whereas the management examined Sri Sita Ram Sonkar, APO in support of their claim. The parties availed opportunity to cross-examine the each other's witnesses apart from putting oral arguments as well as written arguments.

8. Heard learned authorized representatives of the parties and perused entire evidence on record.

9. The authorized representative of the workman has contended that the workman was not project casual labour; rather they were casual labour engaged in construction division/unit. Therefore, he was eligible for grant of temporary status from the date he completed 120 days of service. The railway administration instead treated him as project casual labour and granted him temporary status after lapse of five years which is unfair labour practice. It is also contended that the decisions of the Hon'ble Supreme Court in Indra Pal Yadav case (supra) is not applicable on the workman. The workman's union has relied on:

(i) Union of India vs. Presiding Officer, CGIT-cum-Labour Court, Kanpur Nagar & another 2008(116) FLR 1046.

(ii) Union of India & others vs. Basant Lal & others 1992 SCC (L&S) 611.

(iii) L. Robert D'Souza vs Executive Engineer, Southern Railway & another 1982 SCC (L&S) 124.

(iv) N. Balakrishnan vs. M. Krishnamurthy ACJ 1998 1347 SC.

(v) Kuldeep Singh vs. GM, Instrument Design Development and Facilities Centre & another 2011 (128) FLR 121.

(vi) Din Mohammed (Dead) by LRs. Vs Union of India & others 2002 (92) FLR 1216.

(vii) The Union of India & another vs Girja Shankar & others 2003 (96) FLR 1094.

10. In rebuttal, the authorized representative of the management has contended that the workman has been project casual labour in construction unit and worked with intermittent gap and he was granted temporary status as per Railway Board's letter dated 01.06.84. It has been submitted that the Railway Board vide its letter dated 11.09.86 modified the date of temporary status to the workmen in view of decision given by Hon'ble Supreme Court in Indra Pal Yadav case (supra). The management has contended that the workman was not entitled for grant of temporary status after completion of 120 days continuous service since he was engaged as project casual labour and as per existing Railway Rules, 360 days' continuous services is required for grant of temporary status to a project casual labour. The authorized representative of the management has also contended that the workman has turned up after lapse of more than 20 years and his cause is not tenable in the eye of law being time barred. The management has relied on Inder Pal Yadav & others vs. Union of India (1985) 2 SCC 648.

11. I have given my thoughtful consideration to the rival submissions of the learned authorized representatives of the parties and scanned entire evidence on record in light thereto.

12. The workman has come up with a case that he has been engaged as casual labour in the Construction Unit of the Dy. Chief Engineer (Construction), Northern Railway, Lucknow and he was entitled for grant of temporary status on completion of 120 days of service under P.S. N. 7850, Master Circular 48/92 and Rule 2304, 2501 and 2511 of Indian Railway Establishment Manual; but the management granted him temporary status after five years' of their appointment, amounting to unfair labour practice. The workman's union has not filed any documentary evidence in support of their case; rather it has pleaded that the same is in power and possession of the Railways.

13. The management of the Northern Railways, rebutting the claim of the workman's union has come up with a clear cut case that the workman had been engaged as Project Casual Labour and accordingly, he was entitled for grant of temporary status on completion of 360 days continuous service; and accordingly, he was grated vide Railway Board's letter dated 01.06.84. Later on with decision of Hon'ble Apex Court in Inder Pal Yadav case (supra), the date of grant of temporary status was modified vide Railway Board's letter dated 11.09.86 whereby the workmen was given temporary status from previous date. The management has also stressed upon the facutm of delay in raising the present industrial dispute after lapse of more than 20 years. The authorized representative of the management has pointed out that the workman is working with the railways for decades; but neither he preferred any representation, on the issue; nor moved to the court for redressal of his grievances. It is also stressed by the management that the workman has raised the present

industrial dispute at a highly belated stage without any explanation to the delay. It has also been argued that though there is no limitation in the I.D. Act, 1947; but the same should not be condoned for the want of any explanation from the workman's union. He has also submitted that the Hon'ble Apex Court in number of its verdicts has observed that Courts should exercise their discretion, judiciously, while condoning the delay.

14. The workman's union has adduced evidence of the workman who stated in his cross-examination that he had been appointed as casual labour on 24.4.79 and he was granted temporary status w.e.f. 1.1.84. The workman admitted the photocopy of service record and casual labour card, filed by the management, from paper No. M-9/1 to 9/6.

15. The workman has not filed any documentary proof in support of their claim but has relied on the photocopy of the service record and casual labour card of the workman, filed by the management. The service record of the workman shows the entry regarding grant of temporary status to the workman of different dates and there after grant of revised temporary status from different dates as per Railway Board's circular dated 11.9.86. The photocopy of the casual labour card, filed by the management has details regarding working of the workman with Permanent Way Inspector (Construction) at different-different stations.

Thus, both the parties have relied on the same set of documents in support of their different stands.

16. After going through the rival pleadings of the parties and documentary and oral evidence relied upon by the parties the bone of contention is as to whether the workman was Project casual labour or just casual labour engaged in the railway administration. Had they been Project Casual Labour then the action of the management was right and if they were casual labour on the rolls of railways then they ought to have been granted temporary status on completion of 120 days continuous service.

The burden that lied upon the workman's union was to come with the evidence that the workman was engaged as casual labour and he completed 120 days continuous service on this particular date, making him entitled for grant of temporary status. Thus, it was for the workman's union to lead its evidence on two points firstly that the workman was engaged as Casual Labour and secondly that he completed 120 days' of continuous working on such and such date. But the workman failed to comply with the above requirement. As it relied on the documentary evidence i.e. casual labour card which was in power and possession of the management for working detail; but when the management filed the photocopy of the same then it neither calculated the 120 days' continuous working from it nor disputed its genuineness. This goes to upheld the stand taken by the management that the workman was Project Casual Labour and accordingly he was granted temporary status on completion of 360 days' of continuous working vide Railway Board's letter dated 01.06.84 and thereafter granted them revised temporary status from a back date vide letter dated 11.09.86 as per guidelines of Hon'ble Apex Court.

17. The workman has relied on Union of India vs. Presiding Officer, CGIT-cum-Labour Court, Kanpur Nagar & another which pertains to termination of services of a workman in violation of provisions of Section 25 F, G & H of the Act. However, the facts of the present case are entirely different; hence not applicable in the present case. The workman has also relied on Union of India & others vs. Basant Lal & others 1992 SCC (L&S) 611; wherein the Hon'ble Apex Court has held that a workman having completed 120 days of working becomes entitled for regularization as temporary worker and the Railway cannot deny them the temporary status on the ground that they had been appointed as causal labour on a project work and not on construction work on open line and as such they would acquire the temporary status only after completing 360 days of service. But in the present case the workman's union failed to specify the date when the different workmen completed 120 days' of continuous service, rendering them for grant of temporary status. The workman's union has also relied on L. Robert D'Souza vs. Executive Engineer, Southern Railway & another 1982 SCC (L&S) 124 but the fact of the case law is entirely different from the present case hence not applicable. Likewise the facts of the case law relied upon by the workman in the Union of India & another vs. Girja Shankar & others 2003 (96) FLR 1094, Kuldeep Singh vs. GM Instrument Design Development and Facilities Centre & another 2011 (128) FLR 123 and Din Mhammaed (Dead) by LRs. Vs. Union of India & others 2002 (992) FLR 1216 are quite different from the facts of the present case hence not appreciable.

18. It is well settled that if a party challenges the legality of an action, the burden lies upon him to prove illegality of the action; and if no evidence is produced, the party invoking jurisdiction of the court must fail. In the present case burden was on the workman's union to set out the grounds to challenge the validity of the action of the management in not granting the temporary status to the workman after completion of 120 days' of continuous working. For this the burden of proof was on the workman's union to come with the evidence, that the workman under dispute has been engaged by the management of Railways as casual labour and under Rules they were entitled for grant of temporary status from completion of 120 days services with the employers; but the workman's union has failed to discharge the burned that lied upon them. The workman's union made a pleading, to explain the reason why it is not in position to file any documentary evidence before this Tribunal, in their statement of claim o the effect that the relevant document in support of their claim i.e. Casual Labour Card is attached

in their Service Book. The workman's union in its rejoinder required the management to produce Casual Labour Card in respect of the workman before this Tribunal, resultantly, the management filed photocopy of Casual Labour Card and Services Book in respect of the workman. The workman's union did not dispute the service details filed by the management i.e. Casual Labour Card and extracts of Service Book. Therefore, when the management has field the photocopy of Casual Labour Card as desired by the workman's union then it was incumbent upon the workman's union to come forward and sort out the relevant extract of the Casual Labour Card, which bears working details i.e. working period and number of days, to show that the workman completed 120 days of continuous on such and such date and he was entitled for grant of temporary status from such date. But the workman has utterly failed to bring any evidence to the effect before this Tribunal that the workman was engaged as Causal Labour and that the workman was casual labour and it also failed to specify the date as to when the workman completed 120 days' of continuous working, making him eligible for grant of temporary status.

19. On the contrary the management has come with a clear cut case that the workman was engaged as Project Casual Labour with Construction Unit. It is also contended by the learned authorized representative of opposite party that there are so many projects which go on with the Construction Unit and the workmen were kept engaged in different Projects. It is also specifically pleaded and proved by the management that the workman was granted temporary status vide Railway Board's letter dated 01.06.84; but due to Supreme Court's direction in Indra Pal Yadav Case (supra), the Railway Board vide its letter dated 11.09.86, changed the date of grant of temporary status, as per modified policy and accordingly, reduced the date of Temporary Status through notice. The management has filed photocopy of Service Record in respect of workman, which bears entries regarding grant of temporary status to the workman vide letter dated 22/25.02.85.

20. The management has made a specific pleading to the effect that the claim of the workman's union is stale one and time barred as the union has preferred the case before this Tribunal after lapse of more than 20 years. The workman's union in rebuttal has submitted that there is no provision regarding limitation in the Industrial Disputes Act, 1947; hence their claim is maintainable.

In this regard the workman's union has relied on N. Balakrishnan vs. M. Krishnamurthy 1998 ACJ 1347; wherein Hon'ble Apex Court while dealing with the matter delay has observed that length of delay does not matter, acceptability of the explanation is the only criterion. But the workman's union has not given any explanation in its pleadings as to what prevented them to raise an industrial dispute at an early state. However, in the evidence it has been stated that the workman/union wrote many letters to the opposite parties and the same are pending with them; although no copy of such letter/representation finds its reference either on record or annexure with the affidavit. Moreover, the management witness vide para 9 of his affidavit has denied of submissions of any such application by the workmen.

In Chennai Metropolitan Water Supply and Sewerage Board & Others vs. T.T. Murali Babu 2014 (141) FLR 772, Hon'ble Apex Court has observed as under:

> "The Court should bear in mind that it is exercising an extraordinary and equitable jurisdiction. As a Constitutional Court it has a duty to protect the rights of the citizens but simultaneously it is to keep itself alive to the primary principle that when an aggrieved person, without adequate reason, approaches the Court at his own leisure or pleasure, the Court would be under legal obligation to scrutinize whether the lis at a belated stage should be entertained or not. Be it noted, delay comes in the way of equity. In certain circumstances delay and laches may be fatal but in most circumstances inordinate delay would only invite disaster for the litigant who knocks at the doors of the Court. Delay reflects inactivity and inaction on the part of a litigant – a litigant who has forgotten the basic norms, namely, "procrastination is the greatest thief of time" and second, law does not permit one to sleep and rise like a phoenix. Delay does bring a hazard and causes injury to the lis. In the case at hand, though there has been four years' delay in approaching the Court, yet the writ Court chose not to address the same. It is the duty of the Court to scrutinize whether such enormous delay is to be ignored without any justification."

Further, in Dr. Jawahar Lal Rohatgi Memorial Eye Hospital vs. State of U.P. & others 2013 (138) FLR 11 Hon'ble Allahabad High Court upholding the action of the State Government in denying the making reference of case after 22 years held that it is not expedient for State Government to refer against order of termination dated 26.6.1982 being old and stale case, where the workman filed an application raising industrial dispute after 22 years in 2004. Hon'ble High Court observed that there is nothing to indicate as to why the workman could not approach the authority under the ID Act.

Thus, from the face of record it is crystal clear the workman did not bother to approach the management or any legal forum for redressal of his grievances for more than 20 years; and the explanation forwarded by the workman's union before this Tribunal is insufficient.

21. Hence, from the facts and circumstances of the case and law cited hereinabove; I am of considered opinion that the action of the management of North Central Railway, Allahabad/Kanpur in not giving temporary status to the

workman, Sri Mahesh, from the alleged date of completion of 120 days of service is neither illegal nor unjustified. Accordingly, I come to the conclusion that the workman's union is not entitled to any relief.

22. The reference under adjudication is answered accordingly.

23. Award as above.

LUCKNOW
06th December, 2014

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 1 जनवरी, 2015

का.आ. 76.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में केन्द्रीय सरकार भारत संचार निगम लिमिटेड, अलप्पुझा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, एर्नाकुलम के पंचाट (संदर्भ संख्या 18/2014) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31/12/2014 को प्राप्त हुआ था।

[सं. एल-40012/73/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 1st January, 2015

S.O. 76.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 18/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Ernakulam now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Limited, Alappuzha and their workman, which was received by the Central Government on 31/12/2014.

[No. L-40012/73/2013-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, ERNAKULAM

Present : Shri. D.Sreevallabhan, B.Sc., LL.B, Presiding Officer

(Wednesday the 10th day of December, 2014/ 19th Agrahayana, 1936)

ID 18/2014

Workman : Smt. V K Smitha (Smt. Smitha Salikumar) Elanji Parambil Vadackal-PO Alapuzha (Kerala)

Management : The General Manager Telecom Bharat Sanchar Nigam Limited, Alappuzha Kerala – 688011 By Adv. Shri Saji Varghese

This case coming up for final hearing on 10.12.2014 and this Tribunal-cum-Labour Court on the same day passed the following:

AWARD

In exercise of the powers conferred by clause (d) of sub-section(1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government/Ministry of Labour vide its Order No-L-40012/ 73/2013-IR(DU) dated 19.03.2014 has referred the industrial dispute scheduled thereunder for adjudication to this tribunal.

2. The dispute is:

> "Whether the action of the management of Bharat Sanchar Nigam Limited over the matter of dismissal of Smt. V K Smitha from services w.e.f.16.08.2010 is legal and justified? If not, what relief the workman is entitled to?"

3. After receipt of the reference summons was issued to the workman and the management and the same was served on both parties. Management entered appearance after acceptance of summons. In spite of several adjournments workman did not appear and file any claim statement. On account of the failure of the workman to appear and file claim statement a "no dispute award" is passed in this case. The reference is answered accordingly.

D. SREEVALLABHAN, Presiding Officer

APPENDIX - NIL

नई दिल्ली, 1 जनवरी, 2015

का.आ. 77.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय राष्ट्रीय राजमार्ग प्राधिकरण, इलाहाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 44/2008) को प्रकाशित करती है, जो केन्द्रीय सरकार को 31-12-2014 को प्राप्त हुआ था।

[सं. एल-42011/36/2008-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 1st January, 2015

S.O. 77.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 44/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the National Highways Authority of

India, Allahabad and their workman, which was received by the Central Government on 31/12/2014.

[No. L-42011/36/2008-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 44/2008

Ref. No. L-42011/36/2008-IR(DU) dated: 18.07.2008

BETWEEN :

Sri Surender Kumar Mishra
House No. 98/2, Shankerghat,
Teliyarganj, Allahabad.

AND

1. The Project Director
   National Highways Authority of India
   140/28-A, Sarojini Naidu Marg, Civil Lines,
   Allahabad
2. Major V.K. Sharma (Retired)
   M/s. Vriksh Services
   Toll Plaza, Naini,
   Allahabad

AWARD

1. By order No. L-42011/36/2008-IR(DU) dated: 18.07.2008 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Surender Kumar Mishra, House No. 98/2, Shankerghat, Teliyarganj, Allahabad and the Project Director, National Highways Authority of India, 140/28-A, Sarojini Naidu Marg, Civil Lines, Allahabad & Major V.K. Sharma (Retired), M/s. Vriksh Services, Toll Plaza, Naini, Allahabad for adjudication to this CGIT-cum-Labour Court, Lucknow.

2. The reference under adjudication is:

"WHETHER THE CONTRACT BETWEEN THE MANAGEMENT OF THE PROJECT DIRECTOR, NATIONAL HIGHWAYS AUTHORITY OF INDIA LTD., ALLAHABAD, AND M/S VRIKASH SERVICES, ALLAHABAD, WITH REGARD TO EMPLOYMENT OF SHRI SURENDER KUMAR MISHRA IS SHAM AND BOGUS? IF YES, THEN WHETHER THE ACTION OF THE PRINCIPAL EMPLOYER IN TERMINATING THE SERVICES OF THE SAID WORKMAN IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE WORKMAN IS ENTITLED TO?"

3. The case of the workman, Surendera Kumar Mishra, in brief, is that he was engaged as Toll Collector by the opposite parties w.e.f. 19.02.2005 and continued to work as such till 31.05.2006 when his services have terminated w.e.f. 01.06.2006 without assigning any reason. It is stated by the workman that his name was forwarded by the Directorate General Resettlement to the National Highways Authority of India (hereinafter referred to as NHAI) on their requisition. It is alleged by the workman that during his employment he had been paid below minimum wages and also EPF number was not provided to him though his EPF subscription was deducted regularly. It is stated that the work he executed was permanent in nature but the employers deprived him of the status of privileges of permanent worker. It is also stated by the workman that the agreement entered into by the management of NHAI and opposite No. 2 is sham and bogus; and accordingly, has prayed that his termination be set aside, be reinstated with consequential benefits, including back wages etc.

4. The opposite party No. 01 has filed its written statement in reply to the statement of claim, filed by the workman; whereas the opposite party No. 02 viz. Major V.K. Sharma (Retired) M/s. Vriksh Services, Allahabad did not turn up in spite of several registered notices. However, notice sent by this Tribunal was received back with remark "दरिप्याफ्त करने पर पता चला कि प्राप्तकर्ता टूल प्लाजा से कहीं दूसरे जगह पर चले गए अत: वापस".

5. The management of NHAI in its written statement has denied the claim of the workman with submission that it is a corporate body, established under the National Highways Authority of India Act, 1998, with responsibility of development, maintenance and management of the National Highways and any other highways vested in or entrusted to, it by the Government. It is also submitted that the NHAI also collects fee on behalf of the Central Government for services or benefits rendered. It is stated that as per Rule 5 of the National Highways (Fees for the use of National Highways Section and Permanent Bridge-Public Funded Project) Rules, 1997 all fees levied under these rules shall be collected by the executing agency concerned departmentally or through private contractors on the basis of competitive bidding on behalf of Central Government. To assist in fee collection the NHAI appoints User /toll Fee Collection Management agency for a fixed period and under policy circular the agency has to be an ex-servicemen sponsored by DGR. The NHAI pays percentage of service/supervision charges to appointed agency, over the personnel's emoluments bill engaged by User/Toll Fee Collection Management Agency. It is further stated that the NHAI, for the Toll/user fee collection at Naini Bridge, Allahabd, entered into an agreement on 14.2.2005 with Major (Retd), V.K. Sharma Proprietor M/s. Vriksh Services for a fixed period which was extended from time to time and came to an end on 29.2.2008. It is submitted

that the workman under question was never appointed by the NHAI; rather he was engaged by the M/s. Vriksha Services for toll collection work and was paid by the Agency accordingly. Therefore, the management of the NHAI has prayed that the claim of the applicant be rejected being devoid of any merit.

6. The workman has filed its rejoinder whereby he has introduced nothing new apart from reiterating the facts already mentioned in the statement of claim.

7. The workman has not filed any documentary support in support of his case; whereas the management of NHAI has field photocopy of contract dated 14.02.2005, entered between NHAI & M/s Vriksha Services; and details of working and payment made to the workman from 19.02.2005 to 31.05.2006, in support of their pleadings. The workman examined himself; whereas the management examined Shri Ranjeet Kumar, Personal Secretary in support of their respective stands. The parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral arguments.

8. Heard the authorized representatives of the parties at length; and perused entire evidence available on record.

9. The authorized representative of the workman has argued that the workman was engaged by the opposite parties w.e.f. 19.02.2005 and he worked as such till 31.5.2006 and his services have been terminated without retrenchment compensation or notice pay in lieu of notice, ignoring this fact that the workman worked for more than 240 days in the preceding twelve months from the date of termination, in violation of the provisions of Section 25 of the Industrial Disputes Act, 1947. It is also contended that the work performed by the workman is perennial in nature even then the management terminated his services, which amounts to unfair labour practice and also that the contract entered into by the NHAI and M/s Vriksh Services was not valid one as the NHAI is not the competent authority for the same.

10. Per contra, the opposite party No. 01's representative has contended that the NHAI for collection of fee through private contractors is authorized to enter into contract in terms of Rule 5 of the National Highways (Fees for the use of National Highways Section and Permanent Bridge-Public Funded Project) Rules, 1997; and accordingly, the contract between NHAI and M/s Vriksh Services is legal. Further, it has been contended that the workman had never been in the employment of NHAI inasmuch as he had never been appointed by NHAI, therefore, there arise no question of making him payment or terminating his services at any point of time. Likewise, it is also contended that when there was no employment/termination then there arises no question of violation of any of the provisions of Industrial Disputes Act, 1947 viz. Section 25.

11. The workman in his cross-examination has stated on oath that no appointment letter was given to him. The workman also stated that Mr. V.K. Sharma used to give him salary and he did not enter into any agreement with NHAI. He also stated that advertisement was published by V.K. Sharma.

On the contrary the management witness, Shri Ranjeet Kumar stated in his cross-examination that there is no post of Toll Collector in his department and the workman did not work with in his office during his tenure.

12. The reference under adjudication is two pointed. Firstly, regarding validity of contract entered into by the NHAI and M/s Vriksh Services and secondly, legality of termination of the workman.

13. As regard first issue, the sole contention from the workman regarding validity of the contract is that since it is executed by a party i.e. NHAI which is not competent authority to execute the agreement, therefore the same sham and bogus.

From pleadings, it is very much clear that the opposite party NHAI is a body/agency established under the National Highways Authority of India Act, 1988 and is working under the administrative control of the Department of Road Transport and Highways, Ministry of Shipping, Road Transport and Highways, Government of India. Under provisions of the Section 16 of the Act, 1988 the functions of the NHAI is to develop, maintain and manage the National Highways and many other highways vested in or entrusted to it, by the Government. Further, it is also its duty to collect fee on behalf of the Central Government for services or benefits rendered, under Section 7 of the National Highways Act, 1956, and such other fees on behalf of the State Governments on such terms and conditions as may be specified by such State Government. As per Section 7 (2) of the National Highways Act, 1956, such fees when so levied shall be collected in accordance with the Rules made under this Act.

It is pertinent to mention here that that the Central Government, in exercise to the powers conferred under the National Highways Act, 1956 framed the National Highways (Fees for the use of National Highways Section and Permanent Bridge-Public Funded Project) Rules, 1997 and the Rule 5 of the said Fee Rules reads as under:

> 5. **Procedure for collection. -** All fees levied under these rules shall be collected by the executive agency concerned departmentally or through private contractors on the basis of competitive bidding on behalf of Central Government."

The term 'executing agency' is defined in Rule 2 (b) as under:

> "2.(b) executing agency means.
>
> (i) ……..
>
> (ii) In case of those national highways or part thereof entrusted to National Highways

Authority of India (hereinafter referred to as 'NHAI', the National Highways Authority of India."

A bare perusal of Rule 5 of Fee Rules it is crystal clear that the executive agency may collect the fee levied either with the use of departmental men power or it may collect the same though some private contractors; and a private agency when some contract is executed with it, it becomes private contractor for the purposes of above Rule. Also, on reading the Rule 5 with Rule 2(b) it becomes clear that NHAI is the executing agency and can enter into any agreement with some private agency for collection of fee levied.

Thus, from the discussions made hereinabove, I am of opinion that the opposite party No. 1 i.e. NHAI was competent enough to enter into a contract with the M/s Vriksh Services within the terms of the National Highways (Fees for the use of National Highways Section and Permanent Bridge-Public Funded Project) Rules, 1997, therefore, the contract between the management of the Project Director, NHAI, Allahabad and M/s Vriksh Services, Allahabad was legally valid.

14. Now coming to the second part of the reference order, the workman in his cross-examination has admitted that he neither made any application for appointment nor any appointment letter was issued to him. He also admitted that he was interviewed by Mr. V.K. Sharma who used to pay him salary initially in cash and later through cheque. The above version of the workman himself gives support to the pleadings of the management which has come up a case that it never appointed the workman nor made any payment to the workman nor terminated his services at any point of time.

The learned authorized representative of the workman has contended that the workman has worked for more than 240 days in a year preceding the date of alleged termination, therefore, the management was duty bound to comply with the provisions of Section 25 of the Industrial Disputes Act, 1947 before terminating the services of the workman. Hon'ble Apex Court, in Surenderanagar Panchayat and another v. Jethabhai Pitamberbhai 2005 (107) FLR 1145 (SC) came to the conclusion that the workman could be entitled for the protection of Section 25 – F of the Industrial Disputes Act, 1947 provided he is successful in establishing the fact that he had been in employment with the employer for a period of 240 days uninterruptedly. It was held by the Hon'ble Supreme Court that in such cases, the scope of the enquiry before the Labour Court was confined only to 12 months preceding the date of termination to decide the question of the continuous service for the purpose of Section 25-F of the Industrial Disputes Act, 1947.

But in view of the denial of employee and employer relationship between the workman and the NHAI, the initial burden on the workman to prove that he was in employment of the NHAI and his services have been terminated by the NHAI, in violation of provisions of Section 25 F of the Act. But, in the present case the workman during his cross-examination himself has admitted that no appointment letter was issued to him and he was actually interviewed and later on paid by Major V.K. Sharma (Retd) who was proprietor of the M/s Vriksh Services. This goes to prove the contention of the NHAI that there was no relationship of employee and employer between the workman and the NHAI; hence, there arose no question of termination of the services of the workman by the NHAI at any point of time, therefore, there was no violation to the Section 25 F of the Act in the part of NHAI.

15. Since the opposite party No. 2 i.e. M/s Vriksh Services did not turn up before this Tribunal to contest their case and the case proceeded ex-parte against them. From the evidence relied on by the parties, it is apparent on the face of record that the M/s Vriksh Services was entrusted with liability, through a contract dated 14.02.2005, of collecting Fee on behalf of NHAI. The said contract was extended by the management from time to time and the same came to an end on 29.02.2008. The working chart of the workman goes to show that he was inducted in February, 2005 and was terminated in May, 2006 and in the preceding twelve months from the date of his termination he worked for 345 days.

In the instant case the workman has worked with a contractor, who engaged the workman in view of a contract assigned to him for specified period. Such appointments are termed appointments and liable to cease automatically with cessation of period of engagement. Hence, the workman cannot claim benefits of Section 25 of the Industrial Disputes Act, 1947, in spite of the fact that he completed 345 days of working, as the opposite party No. 2 i.e. M/s Vriksh Services is a private contractor and such contractors does not come within the purview of definition of 'industry' specified in Section 2 'j' of the Act. Therefore, the workman cannot claim compliance of provisions of Section 25 F before termination of his services, as such no relief can be grated to him for alleged illegal termination of his services by the M/s Vriksh Services.

M/s Vriksh Services, the opposite party No. 2 although not covered within the definition of "Industry" under the provisions of the Industrial Disputes Act, 1947 and also did not turn before this Tribunal on their behalf, therefore, if the workman wishes to move other competent forum/court, against opposite party No. 2, he may proceed under legal provisions.

16. Thus, in view of the facts and circumstances of the case and evidence relied upon by the parties, I come to conclusion that the contract between the management of the Project Director, NHAI, Allahabad and M/s Vriksh Services, Allahabad for collection of Fee was legal; and

accordingly, there is no role of the management of NHAI in terminating the service of the workman. Therefore, I come to conclusion that the workman, Sri Surender Kumar Mishra is not entitled to any relief from the NHAI.

17. The reference under adjudication is answered accordingly.

18. Award as above.

LUCKNOW
06th December, 2014

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 1 जनवरी, 2015

का.आ. 78.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारतीय राष्ट्रीय राजमार्ग प्राधिकरण, इलाहाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 43/2008) को प्रकाशित करती है जो केन्द्रीय सरकार को 31-12-2014 को प्राप्त हुआ था।

[सं. एल-42011/35/2008-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 1st January, 2015

S.O. 78.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 43/2008) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the National Highways Authority of India, Allahabad and their workman, which was received by the Central Government on 31/12/2014.

[No. L-42011/35/2008-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : Shri RAKESH KUMAR, Presiding Officer

I.D. No. 44/2008

Ref. No. L-42011/35/2008-IR(DU) dated: 18.07.2008

BETWEEN :

Sri Suresh Singh
R/o Village - Chaukhata,
Post - Bagbana,
Thana - Ghoorpur,
Allahabad.

AND

1. The Project Director
   National Highways Authority of India
   140/28-A, Sarojini Naidu Marg, Civil Lines
   Allahabad

2. Major V.K. Sharma (Retired)
   M/s Vriksh Services
   Toll Plaza, Naini
   Allahabad

AWARD

1. By order No. L-42011/35/2008-IR(DU) dated: 18.07.2008 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Shri Suresh Singh, R/o Village – Chaukhata, Post – Bagbana, Thana – Ghoorpur, Allahabad and the Project Director, National Highways Authority of India, 140/28-A, Sarojini Naidu Marg, Civil Lines, Allahabad & Major V.K. Sharma (Retired), M/s. Vriksh Services, Toll Plaza, Naini, Allahabad for adjudication to this CGIT-cum-Labour Court, Lucknow.

2. The reference under adjudication is:

"WHETHER THE CONTRACT BETWEEN THE MANAGEMENT OF THE PROJECT DIRECTOR, NATIONAL HIGHWAYS AUTHORITY OF INDIA LTD., ALLAHABAD, AND M/S VRIKSH SERVICES, ALLAHABAD, WITH REGARD TO EMPLOYMENT OF SHRI SURESH SINGH IS SHAM AND BOGUS? IF YES, THEN WHETHER THE ACTION OF THE PRINCIPAL EMPLOYER IN TERMINATING THE SERVICES OF THE SAID WORKMAN IS LEGAL AND JUSTIFIED? IF NOT, TO WHAT RELIEF THE WORKMAN IS ENTITLED TO?"

3. The case of the workman, Suresh Singh, in brief, is that he was engaged as Toll Collector by the opposite parties w.e.f. 25.02.2005 and continued to work as such till 31.05.2007 when his services have terminated w.e.f. 01.06.2007 without assigning any reason. It is stated by the workman that his name was forwarded by the Directorate General Resettlement to the National Highways Authority of India (hereinafter referred to as NHAI) on their requisition. It is alleged by the workman that during his employment he had been paid below minimum wages and also EPF number was not provided to him though his EPF subscription was deducted regularly. It is stated that the work he executed was permanent in nature but the employers deprived him of the status of privileges of permanent worker. It is also stated by the workman that the agreement entered into by the management of NHAI and opposite No. 2 is sham and bogus; and accordingly, has prayed that his termination be set aside, be reinstated with consequential benefits, including back wages etc.

4. The opposite party No. 01 has filed its written statement in reply to the statement of claim, filed by the

workman; whereas the opposite party No. 02 viz. Major V.K. Sharma (Retired) M/s Vriksh Services, Allahabad did not turn up in spite of several registered notices. However, notice sent by this Tribunal was received back with remark "दरिप्याफ्त करने पर पता चला कि प्राप्तकर्ता टूल प्लाजा से कहीं दूसरे जगह पर चले गए अत: वापस".

5. The management of NHAI in its written statement has denied the claim of the workman with submission that it is a corporate body, established under the National Highways Authority of India Act, 1998, with responsibility of development, maintenance and management of the National Highways and any other highways vested in or entrusted to, it by the Government. It is also submitted that the NHAI also collects fee on behalf of the Central Government for services or benefits rendered. It is stated that as per Rule 5 of the National Highways (Fees for the use of National Highways Section and Permanent Bridge-Public Funded Project) Rules, 1997 all fees levied under these rules shall be collected by the executing agency concerned departmentally or through private contractors on the basis of competitive bidding on behalf of Central Government. To assist in fee collection the NHAI appoints User /toll Fee Collection Management agency for a fixed period and under policy circular the agency has to be an ex-servicemen sponsored by DGR. The NHAI pays percentage of service/supervision charges to appointed agency, over the personnel's emoluments bill engaged by User/Toll Fee Collection Management Agency. It is further stated that the NHAI, for the Toll/user fee collection at Naini Bridge, Allahabd, entered into an agreement on 14.2.2005 with Major (Retd), V.K. Sharma Proprietor M/s Vriksha Services for a fixed period which was extended from time to time and came to an end on 29.2.2008. It is submitted that the workman under question was never appointed by the NHAI; rather he was engaged by the M/s Vriksha Services for toll collection work and was paid by the Agency accordingly. Therefore, the management of the NHAI has prayed that the claim of the applicant be rejected being devoid of any merit.

6. The workman has field its rejoinder whereby he has introduced nothing new apart from reiterating the facts already mentioned in the statement of claim.

7. The workman has not filed any documentary support in support of his case; whereas the management of NHAI has field photocopy of contract dated 14.02.2005, entered between NHAI & M/s Vriksha Services; and details of working and payment made to the workman from February, 2005 to May, 2007, in support of their pleadings. The workman examined himself; whereas the management examined Shri Ranjeet Kumar, Personal Secretary in support of their respective stands. The parties availed opportunity to cross-examine the witnesses of each other apart from forwarding oral arguments.

8. Heard the authorized representatives of the parties at length; and perused entire evidence available on record.

9. The authorized representative of the workman has argued that the workman was engaged by the opposite parties w.e.f. 25.02.2005 and he worked as such till 31.5.2007 and his services have been terminated without retrenchment compensation or notice pay in lieu of notice, ignoring this fact that the workman worked for more than 240 days in the preceding twelve months from the date of termination, in violation of the provisions of Section 25 of the Industrial Disputes Act, 1947. It is also contended that the work performed by the workman is perennial in nature even then the management terminated his services, which amounts to unfair labour practice and also that the contract entered into by the NHAI and M/s Vriksh Services was not valid one as the NHAI is not the competent authority for the same.

10. Per contra, the opposite party No. 01's representative has contended that the NHAI for collection of fee through private contractors is authorized to enter into contract in terms of Rule 5 of the National Highways (Fees for the use of National Highways Section and Permanent Bridge-Public Funded Project) Rules, 1997; and accordingly, the contract between NHAI and M/s Vriksh Services is legal. Further, it has been contended that the workman had never been in the employment of NHAI inasmuch as he had never been appointed by NHAI, therefore, there arise no question of making him payment or terminating his services at any point of time. Likewise, it is also contended that when there was no employment/termination then there arises no question of violation of any of the provisions of Industrial Disputes Act, 1947 viz. Section 25.

11. The workman in his cross-examination has stated on oath that he had been appointed in the year 2004 at Toll Plaza, Naini for which he did not give any application. He stated that he was interviewed by Mr. V.K. Sharma; and no appointment letter was given to him. The workman also stated that Mr. V.K. Sharma used to give him salary and he did not enter into any agreement with NHAI. He also stated that earlier he was paid in cash and later was given salary through cheque and the cheques were given by V.K. Sharma.

On the contrary the management witness, Shri Ranjeet Kumar stated in his cross-examination that there is no post of Toll Collector in his department and the workman did not work with in his office during his tenure.

12. The reference under adjudication is two pointed. Firstly, regarding validity of contract entered into by the NHAI and M/s Vriksh Services and secondly, legality of termination of the workman.

13. As regard first issue, the sole contention from the workman regarding validity of the contract is that since it is executed by a party i.e. NHAI which is not competent authority to execute the agreement, therefore the same sham and bogus.

From pleadings, it is very much clear that the opposite party NHAI is a body/agency established under the National Highways Authority of India Act, 1988 and is working under the administrative control of the Department of Road Transport and Highways, Ministry of Shipping, Road Transport and High ways, Government of India. Under provisions of the Section 16 of the Act, 1988 the functions of the NHAI is to develop, maintain and manage the national highways and many other highways vested in or entrusted to it, by the Government. Further, it is also its duty to collect fee on half of the Central Government for services or benefits rendered, under Section 7 of the National Highways Act, 1956, and such other fees on behalf of the State Governments on such terms and conditions as may be specified by such State Government. As per Section 7 (2) of the National Highways Act, 1956, such fees when so levied shall be collected in accordance with the Rules made under this Act.

It is pertinent to mention here that that the Central Government, in exercise to the powers conferred under the National Highways Act, 1956 framed the National Highways (Fees for the use of National Highways Section and Permanent Bridge-Public Funded Project) Rules, 1997 and the Rule 5 of the said Fee Rules reads as under:

> **5. Procedure for collection. -** All fees levied under these rules shall be collected by the executive agency concerned departmentally or through private contractors on the basis of competitive bidding on behalf of Central Government."
>
> The term 'executing agency' is defined in Rule 2 (b) as under:
>
> "2.(b) executing agency means.
>
> (i) ……..
>
> (ii) In case of those national highways or part thereof entrusted to National Highways Authority of India (hereinafter referred to as 'NHAI', the National Highways Authority of India."

A bare perusal of Rule 5 of Fee Rules it is crystal clear that the executive agency may collect the fee levied either with the use of departmental men power or it may collect the same though some private contractors; and a private agency when some contract is executed with it, it becomes private contractor for the purposes of above Rule. Also, on reading the Rule 5 with Rule 2(b) it becomes clear that NHAI is the executing agency and can enter into any agreement with some private agency for collection of fee levied.

Thus, from the discussions made hereinabove, I am of opinion that the opposite party No. 1 i.e. NHAI was competent enough to enter into a contract with the M/s Vriksh Services within the terms of the National Highways (Fees for the use of National Highways Section and Permanent Bridge-Public Funded Project) Rules, 1997, therefore, the contract between eh management of the Project Director, NHAI, Allahabad and M/s Vriksh Services, Allahabad was legally valid.

14. Now coming to the second part of the reference order, the workman in his cross examination has admitted that he neither made any application for appointment nor any appointment letter was issued to him. He also admitted that he was interviewed by Mr. V.K. Sharma who used to pay him salary initially in cash and later through cheque. The above version of the workman himself gives support to the pleadings of the management which has come up a case that it never appointed the workman nor made any payment to the workman nor terminated his services at any point of time.

The learned authorized representative of the workman has contended that the workman has worked for more than 240 days in a year preceding the date of alleged termination, therefore, the management was duty bound to comply with the provisions of Section 25 of the Industrial Disputes Act, 1947 before terminating the services of the workman. Hon'ble Apex Court, in Surenderanagar Panchayat and another v. Jethabhai Pitamberbhai 2005 (107) FLR 1145 (SC) came to the conclusion that the workman could be entitled for the protection of section 25 – F of the Industrial Disputes Act, 1947 provided he is successful in establishing the fact that he had been in employment with the employer for a period of 240 days uninterruptedly. It was held by the Hon'ble Supreme Court that in such cases, the scope of the enquiry before the Labour Court was confined only to 12 months preceding the date of termination to decide the question of the continuous service for the purpose of section 25-F of the Industrial Disputes Act, 1947.

But in view of the denial of employee and employer relationship between the workman and the NHAI, the initial burden on the workman to prove that he was in employment of the NHAI and his services have been terminated by the NHAI, in violation of provisions of Section 25 F of the Act. But, in the present case the workman during his cross-examination himself has admitted that no appointment letter was issued to him and he was actually interviewed and later on paid by Major V.K. Sharma (Retd) who was proprietor of the M/s Vriksh Services. This goes to prove the contention of the NHAI that there was no relationship of employee and employer between the workman and the NHAI; hence, there arose no question of termination of the services of the workman by the NHAI at any point of time, therefore, there was no violation to the Section 25 F of the Act in the part of NHAI.

15. Since the opposite party No. 2 i.e. M/s Vriksh Services did not turn up before this Tribunal to contest their case and the case proceeded ex-parte against them. From the evidence relied on by the parties, it is apparent

on the face of record that the M/s Vriksh Services was entrusted with liability, through a contract dated 14.02.2005, of collecting Fee on behalf of NHAI. The said contract was extended by the management from time to time and the same came to an end on 29.02.2008. The working chart of the workman goes to show that he was inducted in February, 2005 and was terminated in May, 2007 and in the preceding twelve months from the date of his termination he worked for 292 days.

In the instant case the workman has worked with a contractor, who engaged the workman in view of a contract assigned to him for specified period. Such appointments are termed appointments and liable to cease automatically with cessation of period of engagement. Hence, the workman cannot claim benefits of Section 25 of the Industrial Disputes Act, 1947, in spite of the fact that he completed 292 days of working, as the opposite party No. 2 i.e. M/s Vriksh Services is a private contractor and such contractors does not come within the purview of definition of 'industry' specified in Section 2 'j' of the Act. Therefore, the workman cannot claim compliance of provisions of Section 25 F before termination of his services, as such no relief can be grated to him for alleged illegal termination of his services by the M/s Vriksh Services.

M/s Vriksh Services, the opposite party No. 2 although not covered within the definition of "Industry" under the provisions of the Industrial Disputes Act, 1947 and also did not turn before this Tribunal on their behalf, therefore, if the workman wishes to move other competent forum/court, against opposite party No. 2, he may proceed under legal provisions.

16. Thus, in view of the facts and circumstances of the case and evidence relied upon by the parties, I come to conclusion that the contract between the management of the Project Director, NHAI, Allahabad and M/s Vriksh Services, Allahabad for collection of Fee was legal; and accordingly, there is no role of the management of NHAI in terminating the service of the workman. Therefore, I come to conclusion that the workman, Shri Suresh Singh is not entitled to any relief from the NHAI.

17. The reference under adjudication is answered accordingly.

18. Award as above.

LUCKNOW
06th December, 2014

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 1 जनवरी, 2015

का.आ. 79.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार हिंदुस्तान एयरोनॉटिक्स लिमिटेड, कोरवा के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 04/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 31-12-2014 को प्राप्त हुआ था।

[सं. एल-42011/136/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 1st January, 2015

S.O. 79.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 04/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Hindustan Aeronautics Ltd., Korva and their workmen, which was received by the Central Government on 31/12/2014.

[No. L-42011/136/2013-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 04/2014

Ref.No. L-42011/136/2013-IR(DUI) dated 11.02.2013

BETWEEN

General Secretary
Safai Karmchari Union
Korva Mandal, Amethi CSM Nagar (U.P.)

AND

1. The Chief Manager(JR)
   Hindustan Aeronautices Ltd.Korva Mandal
   Korva

AWARD

1. By order No. L-42011/136/2013-IR(DU) dated 11.02.2013 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between General Secretary, Safai Karmchari Union, Korva Mandal Amethi CSM Nagar (U.P.) and the Chief Manager (HR), Hindustan Aeronautics Ltd., Korva Mandal, Korva for adjudication.

2. The reference under adjudication is:

"KYA PRABANDHAN HAL, KORVA MANDAL, AMETHI DWARA SAVINDA SAFAI KARMCHARI KO VARSH 2011-2012 ME BONUS KA BHUGTAN NA KIYA JANA UCHIT AVAM VADHANIK HAI? YADI NAHI TO SHRAMIKGAN KYA HIT LABH PANE KE ADHIKARI HAI?"

3. The order of reference was endorsed to the General Secretary, Safai Karmchari Union, Korva Mandal, Amethi CSM Nagar (U.P.) with the direction to the party raising the dispute to file the statement of claim along with relevant documents, list of reliance and witnesses with the Tribunal within fifteen days of the receipt of the order of reference and also forward a copy of such a statement to each one of the opposite parties involved in this dispute under rule 10 (B) of the Industrial Disputes (Central), Rules, 1957

4. The order of reference was registered in the Tribunal On 03.03.2014 and notice was issued for filing statement of claim by the workman.

5. The workman did not file statement of claim although sufficient opportunity was given. It is presumed that workman does not want to pursue this case.

6. Under the circumstances and the facts mentioned herein, no relief is legally required to be given to the applicants/workmen. The reference under adjudication is answered as NO CLAIM AWARD.

7. Award as above.

LUCKNOW
06.12.2014

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 1 जनवरी, 2015

का.आ. 80.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सेंट्रल एवियन रिसर्च इंस्टीट्यूट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 01/2009) को प्रकाशित करती है जो केन्द्रीय सरकार को 31-12-2014 को प्राप्त हुआ था।

[सं. एल-42011/61/2008-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 1st January, 2015

S.O. 80.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 01/2009) of the Central Government Industrial Tribunal-cum-Labour Court, Lucknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Central Avian Research Institute and their workmen, which was received by the Central Government on 31/12/2014.

[No. L-42011/61/2008-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 01/2009

Ref.No. L-42011/61/2008-IR(DU) dated 09.02.2009

BETWEEN :

The President
Bhartiya Mazdoor Sangh
Regional Office, C/o Jagdish Chand Sharma
Bansmandi, Bareilly (U.P.)

(Espousing case of Shri Sushil Kumar Saxena)

AND

The Director
Central Avian Research Institute
Bareilly (U.P) – 243122

AWARD

1. By order No. L-42011/61/2008-IR(DU) dated: 09.02.2009, the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between the President Bhartiya Mazdoor Sangh, Regional Office, C/o Jagdish Chand Sharma, Bansmandi Bareilly (U.P.) and the Director, Central Avian Research Institute, Bareilly (U.P) for adjudication to this CGIT-cum-Labour Court, Lucknow.

2. The reference under adjudication is:

"WHETHER THE DEMAND OF BHARTIYA MAZDOOR SANGH FOR REGULARIZATION OF SERVICES OF SHRI SUSHIL KUMAR SAXENA, CASUAL TECHNICIAN FROM 1996 BY THE MANAGEMENT OF CENTRAL AVIATION RESEARCH INSTITUTE IS LEGAL AND JUSTIFIED? IF YES, TO WHAT RELIEF THE WORKMAN IS ENTITLED TO?"

3. It is admitted case of the parties that the workman, Sushil Kumar Saxena, was engaged as Technician against the permanent regular vacant post as daily wager w.e.f. 14.08.1989; whose services have been terminated by the management. The workman raised an industrial dispute; wherein an award, directing the workman to be reinstated with continuity in service was passed vide dated 05.08.2008; and accordingly the workman was reinstated w.e.f. 04.01.2005, in terms of award dated 05.08.2008, which was never challenged by the opposite party. Moreover, the workman is working on Muster Roll as casual technician @ Rs. 85/- per day as basic pay plus DA w.e.f. 01.01.2006 in accordance with the recommendations of the 6th Central Pay Commission.

4. It is alleged by workman's union that the Department of Personnel and Training, Government of India has

formulated a scheme with regard to grant of temporary status and regularization of casual workers who have worked continuously for 240 days in a year and were in the employment on 01.09.1993 and the employers have adopted the scheme vide circular No. 24-15/93-Cdn Dated 23.11.1994; but the employers have not extended the benefits of said scheme to the workman. It has specifically been submitted by the workman that the workman had been terminated on 25.3.1991 and the Tribunal found the termination of the workman concerned to be illegal and unjustified and accordingly reinstated him with continuity in service. The award was never challenged and implemented, therefore, it attained finality and resultantly, the workman shall be deemed in service as on 01.09.1993 and as was entitled for benefits of circular dated 23.11.1994. It has been alleged by the workman's union that the management denied the workman for the benefits of the circular dated 23.11.1994; but has given temporary status and later on regularized the services of S/Sri P.K. Bajpai, U.S. Tripathi and Ravi Kumar Goel who were junior to him. Accordingly, the workman's union has prayed that the workman be given temporary status and be regularized with consequential benefits at par with other junior employees.

5. The management in its written statement has submitted that the case of the workman for appointment on regular basis does not fall within the jurisdiction of this Tribunal in as much as the scheme of DoPT, Government of India for grant of temporary status to the Casual Labour was a onetime scheme, which provided that a casual labour worked continuously for 240 days only will be entitled for grant of temporary status and subsequently for regularization. It has been submitted by the management that since there is no vacancy in the technical cadre available in the Institute therefore, there arises no question of considering the workman for absorption in the said post in light of rules and regulations. As regard regularizing the other workmen junior to the workman, it is submitted by the management that Sri Ravi Kumar Goel and P.N. Bajpai were not given temporary status and had been appointed through direct recruitment only on the basis of Judgment of Hon'ble Court; whereas Sri U.K. Tripathi was never given post of Technician as he is still working as S.S. Gr. I (Mazdoor) in the institute. Accordingly, the management has prayed that the claim of the workman's union is liable to be rejected being devoid of any merit.

6. The workman's union has filed its rejoinder wherein apart from reiterating the statements already submitted in the statement of claim it has introduced nothing new.

7. The parties have filed documentary proof in support of their respective cases. The workman's union has examined the workman in support of their stand. The opportunity of the management to cross-examine the workman was closed vide order dated 04.01.2012; and date was fixed for management evidence. When the management did not file any evidence, the date was fixed for argument vide order dated 10.04.2012. Although the management was present on few dates thereafter; but it did not bother to recall the ex-parte orders against it. On assumption of charge by the new Presiding Officer to this Tribunal, the management was issued notice by registered post to appear before this Tribunal and forward its argument on 24.11.2014; but none turned up from the management nor moved any adjournment seeking date. Accordingly, heard the authorized representative of the workman's union alone.

8. Heard authorized representative of the workman's union and gone though evidence available on record as well as respective pleadings of the parties.

9. The authorized representative of the workman has submitted that the workman had been appointed engaged as casual labour w.e.f. 14.08.1989, who had been terminated w.e.f. 25.3.1991; but the Tribunal vide its award dated 5.08.2005 held the termination to be illegal and unjustified and award reinstatement to the workman with continuity in service. It is also contended by the workman that the scheme for grant of temporary status to the workman as applicable for those casual labours who on the rolls of the opposite party as on 01.09.1993 and had completed 240 days' continuous working in a year. Since the workman had been reinstated with continuity in service, therefore, he was entitled for grant of temporary status assuming him in service by the virtue of award dated 05.8.2005 at par with other juniors.

10. The management of the Central Avian Research Institute has come up with the case that the workman was engaged intermittently and the scheme was for the casual labour who worked continuously for 240 days were entitled for grant of temporary status and subsequently for regularization. It is also pleaded by the management that since there is no vacancy in the technical cadre available in the Institute therefore, there arises no question of considering the workman for absorption in the said post in light of rules and regulations.

11. I have scanned the entire evidence, in the light of the rival stands of the parties.

12. Coming to the merit of the case, admittedly, the workman had been engaged as Technician on daily wages w.e.f. 14.08.1989 and was terminated w.e.f. 25.03.1991; which was held illegal; and the workman had been reinstated with continuity in service w.e.f. 04.01.2005, in terms of award dated 05.08.2008 dlivered by this Tribunal, which was never challenged by the opposite party giving finality to the award dated 05.08.2008.

In the mean time, during pendency of the industrial dispute against alleged illegal termination dated 25.03.2008, a scheme was floated vide DoPT's OM No. 512016/2/90-Estt (C) dated 10.09.1993, which was circulated vide letter dated 23.11.1994 of the opposite party regarding grant of temporary status and regularization of casual workers –

adoption of scheme formulated by the Department of Personnel & Training. The above circular dated 23.11.1994 required that temporary status be given to those casual labours, strictly in accordance with the scheme and it was to be ensured that the temporary status is granted only to casual laburers who were eligible in accordance with the guidelines. The salient features of the said scheme was provided in the appendix which reads as under:

"Appendix

Department of Personnel & Training, casual Laburers (Grant of Temporary Status and Regularization) Scheme

1. This Scheme shall be called "Casual Labourers (Grant of Temporary Status and Regularization) Scheme of Government of India, 1993".

2. This scheme will come into force w.e.f. 1.9.1993.

3. This scheme is applicable to casual labourers in employment of the Ministries/Departments of Government of India and their attached and subordinate offices, on the date of issue of these orders. But it shall not be applicable to casual workers in Railways, Department of Telecommunication and Department of Posts who already have their own Schemes.

4. Temporary status

   (i) Temporary status would be conferred on all casual laburers who are in employment on the date of issue of this O.M. and who have rendered a continuous service of at least one year, which means that they must have been engaged for a period of at least 240 days (206 days in the case of offices observing 5 days week).

   (ii) Such conferment of temporary status would be without reference to the creation/ availability of regular Group 'D' posts.

   (iii) ……..

   (iv) Such casual labourers who acquire temporary status will not however, be brought on the permanent establishment unless they are selected through regular selection process for Group 'D' posts.

   (v) 8. Procedure for filling up of Group D posts.

   (i) Two out of every three vacancies in Group 'D' cadres in respective offices where the casual laburers have been working would be filled up as per extant recruitment rules and in accordance with the instructions issued by Department of Personnel & Training from amongst casual workers with temporary status……"

A bare perusal of appendix to the letter dated 23.11.1994, it becomes clear that the above scheme of grant of Temporary Status and Regularization was applicable to those casual workers who were engaged as on 01.09.1993 and have completed 240 days continuous working a year. From the facts pertaining to his industrial dispute, it is apparent that the workman was initially engaged on 14.08.1989; but on the date of introduction of the scheme for grant of temporary status was out of service due to his illegal termination by the opposite party. But the relief extended to the workman by the virtue of award dated 05.08.2008 made in the services as the Tribunal while holding the alleged termination dated 25.03.1991 illegal extended benefit of reinstatement with continuity in service to the workman. Thus, the workman on the crucial date of determination of eligibility i.e. on 01.09.1993 would be deemed in service and having worked for 240 days in a year; hence he was eligible for grant of temporary status.

Accordingly, the management was required to extend the benefits of scheme dated 10.09.1993; but the management neither challenged the award dated 05.08.2008 nor granted the workman temporary status.

13. The management of the CARI has come up with the pleading that there is no vacancy in the Technical cadre in the institute and the post of the workman was not permanent in nature, therefore, he cannot be considered for absorption. But from clause 4 (ii) of the scheme it is very much clear that availability of regular Group 'D' posts had nothing to do with the grant of temporary status to the workman.

14. Further, as regards regularization of the services of the workman, the workman in his examination-in-chief, has stated that the workmen viz. Ravi Kumar Goyal, Pradip Narayan Bajpai and Umesh Tripathi who were junior to him and presently Sri Ravi Kumar Goel is Lab Technician Grade – 2 and Sri Pradip Narayan Bajpai is working as Technician Grade-5. He also stated that these workmen did not undergo any procedure for fresh recruitment; but were regularized as per Court's order. He also stated that the post of Technician is vacant in the department at present.

The management has not cross-examined the workman on above statements. Hon'ble Apex Court in State of U.P. vs. Sheo Shanker Lal Srivastava & others (2006) 3 SCC 276 has laid down that "the statement of the witness, having not been controverted would be deemed to be admitted".

The management has also failed to prove its pleadings by oral evidence. Hon'ble Allahabad High Court in Gyanendra Pal Singh & others vs Cane Commissioner & others 2009 (123) FLR 201 has observed as under:

> "6. Since no counter affidavit has been filed till date, the ground taken in the writ petition are taken to be correct in view of the decisions rendered in Choksi Tube Company Limited v. Union of India, Naseem Bano v. State of U.P. and others."

15. Thus, from the cited and discussions made hereinabove, it is quite clear that the workman who was

out of service on the date of introduction of scheme i.e. 01.09.1993 for grant of temporary status and regularization; but became eligible for consideration as he was reinstated by the management, accepting the Award of the Tribunal. The reinstatement of the workman with continuity in service changes the picture as if there was no termination of the workman; and if the workman have continued from his admitted date of engagement i.e. from 14.08.1989 then he was well on the roll on 01.09.1993 and had completed 240 days continuous service; and hence was entitled for grant of temporary status. Further, as per requirement of the scheme, for regularization, the workman was to undergo regular selection procedure. And also keeping in view vacancy in the Technical staff and regularization of the other junior workmen, the workman is also entitled for regularization and other consequential benefits, subject to suitability as per existing Recruitment Rules, from the date juniors to the workman were regularized.

16. The reference is answered accordingly.

LUCKNOW
06th December, 2014

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 2 जनवरी, 2015

का.आ. 81.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार विशाखापटनम पत्तन न्यास के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, हैदराबाद के पंचाट (के.स.औ.अ. 27/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01-01-2015 को प्राप्त हुआ था।

[सं. एल-34011/2/2012-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 2nd January, 2015

S.O. 81.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 27/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Hyderabad as shown in the Annexure, in the industrial dispute between the management of Visakhapatnam Port Trust and their workmen, received by the Central Government on 01.01.2015.

[No. L-34011/2/2012-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AT HYDERABAD

Present : Smt. M. VIJAYA LAKSHMI,
Presiding Officer

Dated the 4th day of July, 2014

INDUSTRIAL DISPUTE No. 27/2013

Between :

The General Secretary,
VisakhapatnamPort Employees Union,
D.No. 26-15-204, Dharmasakthi Bhawan,
Visakhapatnam-530 001 ...Petitioner

AND

The Chairman,
Visakhapatnam Port Trust,
Port Area, Visakhapatnam-530 005 ...Respondent

Appearances :

For the Petitioner : Party in person

For the Respondent : Party in person

AWARD

The Government of India, Ministry of Labour by its order No. L-34011/2/2012—IR(B-II) dated 6.2.2013 referred the following dispute under section 10(1)(d) of the I.D. Act, 1947 for adjudication to this Tribunal between the management of Visakhapatnam Port Trust and their workmen. The reference is,

SCHEDULE

"Whether the action of the Management of Visakhapatnam Port Trust in not fixing the seniority of Sri P. Nooka Raju, Driver Ist Class F.C. Section (a member workman of Visakhapatnam Port Employees Union) above Sri B. Madhava Rao is in order? What relief the workman concerned is entitled to?"

The reference is numbered in this Tribunal as I.D. No. 27/2013 and notices were issued to the parties concerned.

2. The case stands posted for filing of claim statement to 4.7.2014.

3. At this stage, Petitioner called absent. Claim statement not filed. No representation for Petitioner. In spite of giving fair opportunity Petitioner is not taking interest in the proceedings. In the circumstances, taking that no claim to be made for the Petitioner, 'Nil Award' is passed.

Award is passed accordingly. Transmit.

M. VIJAYA LAKSHMI, Presiding Officer

Appendix of evidence

Witnesses examined for the Petitioner	Witnesses examined for the Respondent
NIL	NIL

Documents marked for the Petitioner

NIL

Documents marked for the Respondent

NIL

नई दिल्ली, 2 जनवरी, 2015

का.आ. 82.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंडियन ओवरसिज बैंक के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 83/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01-01-2015 को प्राप्त हुआ था।

[सं. एल-12012/57/2013-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 2nd January, 2015

S.O. 82.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 83/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Indian Overseas Bank and their workmen, received by the Central Government on 01.01.2015.

[No. L-12012/57/2013-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 4th December, 2014

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 83/2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indian Overseas Bank and their workman)

BETWEEN:

Sri S. Thangavel : 1st Party/Petitioner

AND

The Regional Manager-Central Office
Indian Overseas Bank,
Personnel Department
762, Anna Salai
Chennai-600002 : 2nd Party/Respondent

Appearance :

For the 1st Party/Petitioner : M/s. K.M. Ramesh, Advocates

For the 2nd Party/Respondent : M/s. N.G.R. Prasad, Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/57/2013-IR (B.II) dated 12.08.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The Schedule mentioned in that order is :

"Whether the action of the Management of Indian Overseas Bank in dismissing from service Sri S. Thangavel, Clerk is legal and justified? What relief the concerned workman is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 83/2013 and issued notices to both sides. Both sides entered appearance through their counsel and filed Claim Statement and Counter Statement. The petitioner has filed rejoinder in answer to the Counter Statement.

3. The averments in the Claim Statement filed by the petitioner in brief are as below:

The petitioner was appointed as Messenger in the Respondent Bank in the year 2000. He rose to the position of Clerk/Shroff and was posted to work in Poolambadi branch. He had been discharging his duties faithfully, efficiently and sincerely. While working at Poolambadi branch the petitioner was served with a charge sheet dated 24.07.2011. It was alleged in the charge sheet that the petitioner had stealthily removed a cheuue book from the custody of the bank, made fictitious entry in the Cheque Book Issue Register as if the book was issued to Nattuchalai Village Panchayat Office, forged the signature of an official of Nattuchalai village Panchayat Office in order to appear that the official had received the cheque book, filled-up one of the cheque leaves forging the signature of an account holder of the bank who had deceased, filled up the particulars in the pay-in-slip for crediting Rs. 90,000/- the amount entered in the cheque leaf to the account of Cholamma Devi an account holder of the bank and forged the signature of Cholamma Devi in the remitter's column of the pay-in-slip, that he perpetrated the above acts of forgery in order to fraudulently transfer of Rs. 90,000/- from the deceased borrower's account and thus had committed gross misconduct within the meaning of Clause-5(d) and 5(j) of the Memorandum of Settlement entered into between the bank and its workmen. The petitioner had submitted an explanation denying the charges. The Respondent did not accept the explanation offered by the petitioner but appointed an Enquiry Officer to inquire into the charges. During the enquiry the Enquiry Officer did not accept the objections raised by the defense representative. Only the Investigating Officer was examined by the Enquiry Officer. The enquiry was not conducted in a fair and proper manner or in accordance with the

procedure. The Enquiry Officer submitted a report finding the petitioner guilty of the charges. The Disciplinary Authority had imposed the punishment of dismissal from service on the petitioner. The petitioner is not guilty of the charges alleged against him. He has been made a scapegoat. The petitioner has raised the dispute accordingly. The petitioner has not committed any misconduct alleged against him. The Disciplinary Authority had acted wrongly in imposing the punishment of dismissal from service on the petitioner. The Respondent shall be directed to reinstate the petitioner in service with continuity of service, back wages and other attendant benefits.

4. The Respondent has filed counter statement contending as follows:

The petitioner has been charge sheeted by the Disciplinary Authority for certain omissions and commissions on his part while he was working as messenger at Nattuchalai Branch. He had attempted to defraud the bank by fraudulently transferring the amount of Rs. 90,000/- from one SB account to another SB Account through cheque which was written by him and fictitiously signed by him as true account holder. On 03.10.2009 the petitioner has debited account of Vinayathirthan a retired Tahsildar (deceased) and transferred the proceeds to the account of Cholamma Devi. The entries were posted by Lakshmipathy, Special Cadre Assistant. While the Senior Manager was passing the cheque he observed that the drawer's signature appearing on the cheque did not tally with the specimen signature on record. No one came to the branch for collecting the cheque also. The Branch Manager complained about the incident to the Regional Manager. The cheque book bearing Nos. 074361 to 370 issued in the name of Nattuchalai Village Panchayat Office was not delivered to the Panchayat. One cheque leaf from the cheque book was used to make fraudulent transfer of amount from Vinayathirthan's account. The entry regarding delivery of cheque book was not authenticated by the Senior Manager. The remaining cheque leaves in the cheque book were not used also. The Investigator compared the signatures of the petitioner and Lakshmipathy and observed that the petitioner's handwriting resembled with that of the signature appearing in the cheque for Rs. 90,000/-. The handwriting appearing in the Cheque Book Issue Register pertaining to the issue of the cheque book in question was also that of the petitioner. The signature of Sudha, Panchayat Assistant of Nattuchalai Village Panchayat Office was also found forged by the petitioner. Accordingly, a charge sheet was issued to the petitioner. On departmental enquiry the charges were found proved. The petitioner had removed the cheque book bearing Nos. 074361 to 074370 from the custody of the branch officials. He had made fictitious entry in the Cheque Book Issue Register as if the cheque book was issued to the Panchayat Office, by forging the signature of Assistant of the Panchayat Office. The Forensic Science Department had opined that the entries in the cheque leaf and in the Cheque Book Issue Register are written in the hand of the petitioner. There is no merits in the contention of the petitioner that he was not given sufficient opportunity in the departmental proceedings. The misconduct committed by the petitioner is very serious in nature. He has attempted to misappropriate amount. The petitioner is not entitled to any relief. The claim is liable to be rejected. An order may be passed accordingly.

5. The petitioner has filed rejoinder denying the allegations in the Counter Statement and reiterating his case in the Claim Statement.

6. Though there is a contention in the Claim Statement that the petitioner was not given sufficient opportunity to put forth his case in the departmental proceedings and that the enquiry was not conducted in a fair and proper manner, this contention has not been pressed by the petitioner. Adjudication is based on the proceedings in the enquiry. The petitioner has given evidence before this Court only to state that he was not gainfully employed after he was dismissed from service by the Respondent.

7. The evidence in the case consists of oral evidence of WW1 and documents marked as Ext.W1 to Ext.W20 and Ext.M1 to Ext.M3

8. The points for consideration are:

(i) Whether there is any justification in the action of the Respondent in dismissing the petitioner from service?

(ii) What if any is the relief to which the petitioner is entitled?

The Points

9. The petitioner who was working as Messenger in Nattuchalai Branch of the Respondent Bank has allegedly attempted to misappropriate a sum of Rs. 90,000/- by fabricating documents. The petitioner is said to have made entries in the Cheque Issue Register as if a cheque book has been issued to Nattuchalai Village Panchayat Office forging the signature of an official of the office, used one of the cheque leaves to draw Rs. 90,000/- from the account holder who was no more at the time of the incident and tried to transfer the amount to the account of another account holder. The entry in the Cheque Book Issue register was made on 17.09.2009. According to the Respondent, entries regarding the cheque was posted by Lakshmipathy, a Special Cadre Assistant who sent the same to the Sr. Manager for passing the cheque. The Manager found out that the signature in the cheque is quite different from the specimen signature of the account holder. This along with the fact that nobody came to the bank to claim the cheque made him suspicious and he reported the matter to the higher authorities. An investigation was ordered and MW1

who investigated the matter found out that the entries in the Cheque Book Issue Register were in the handwriting of the petitioner. So also the cheque of Rs. 90,000/- drawn on the account of Vinayathirthan, the deceased account holder was also detected by him to be in the handwriting of the petitioner. To assert whether the handwriting and the signature in the Cheque Issue Register and signature in the cheque were that of the petitioner itself, these were sent to the Forensic Expert along with admitted handwriting of the petitioner and the handwriting experts have opined that the disputed writings are in the hand of the person who has written the specimen handwriting. A departmental enquiry was conducted against the petitioner. He was found guilty and was dismissed from service.

10. The petitioner challenges the finding of the Enquiry Officer that he has committed the alleged misconduct. According to the petitioner, the Respondent did not establish before the Enquiry Officer that the petitioner has committed any misconduct. The counsel for the petitioner has pointed out in support of his contention that the Management has not examined any witnesses other than the Investigating Officer in the enquiry proceedings. The fact that the opinion of the handwriting expert was relied upon even though the concerned expert has not been examined before the Enquiry Officer has also been pointed out by the counsel for the petitioner. Certainly it is a drawback on the part of the Management that none of the staff of Nattuchalai Branch of the Respondent where the incident has taken place have been examined. The only person who is examined is the Investigating Officer and submitted the report. Lakshmipathy who posted the entry regarding the cheque, the Sr. Manager to whom the cheque was taken and other staffs of the bank were also questioned by MW1 in the process of investigation. The finding that the petitioner has done the misconduct and attempted misappropriation has been arrived at by the Investigating Officer on the basis of the disclosure made by these persons and also by examining the documents of the bank covering the incident. The relevant documents are of course produced by the Management. However, those persons who were questioned by the Enquiry Officer were not examined in the enquiry proceedings.

11. However, to make up for the lacunae in the evidence of the Management there is the explanation given by the petitioner, which contains an admission of most of the facts alleged against him. Ex.W3 is the explanation submitted by the petitioner in answer to the charge sheet. In this he has stated that Nattuchalai Branch being a rural area, most of the customers being illiterate, they used to approach him for filling withdrawals / pay-in-slips and as a matter of rendering assistance he used to help them. According to him it was as instructed by the Manager he was filling up the instruments and this was known to the Manager also. He has also stated that the cheque books used to be under the custody of the Manager and he never had access to them but the entries in the Cheque Book Issue Register would be made by him as handed over to him by the Manager who was the custodian and it thus happened that he made entries for the items in the Register and also the concerned cheque. His denial is only in respect of the allegation that he had forged the signature of Sudha, the Assistant NattuchalaiPanchayat Office. He has further stated in his explanation that he had filled up the particulars in the withdrawal slip, but he was unable to identify the person who approached him in connection with this. Thus there is sufficient admission in Ext.W3 that the petitioner himself made entry in the Cheque Book Issue Register, though he would not admit that he had put the signature of the recipient, and also that he filled up the particulars in the cheque leaf and to make it an instrument of Rs. 90,000/-. There is also the investigation report of MW1 which states that the petitioner had told him that he is the one who made the entries.

12. The Investigating Officer who had closely examined the Cheque Book Issue Register and the entries in the relevant cheque and compared them with the handwriting of the petitioner had come to the conclusion that the petitioner is the one who made the entries. The Management has produced the Cheque Book Issue Register, the copy of the cheque in question, withdrawal slip, etc. in the enquiry proceedings.

13. The counsel for the petitioner has vehemently argued that the report of the expert should not have been relied upon by the Enquiry Officer in the absence of the examination of the person concerned. No doubt, expert opinion is only corroborative in nature. However, the argument of the counsel that the expert opinion should not have been looked into at all in the absence of examination of the expert could not be accepted. Section-293 of the Criminal Procedure read with Section-73 of the Evidence Act would show that this argument has no force. The expert opinion was rendered by the Deputy Director of Forensic Science Department, Chennai. The report prepared by him is marked as Ext.M2. Section-293 of the Criminal Procedure Code states that any document purporting to be a report under the hand of a Govt. Scientific Expert to whom the Section applies upon any matter or thing duly submitted to him for examination or analysis and report in the course of any proceeding under the Court may be used as evidence in any enquiry, trial or other proceeding under the code. True a departmental proceeding is not a proceeding under the code. Still the nature of the proceeding is such since criminal imputation is attributed to the petitioner in the sense that he has forged documents in his attempt of misappropriation. So it was not necessary for the Management to examine the forensic expert before the report itself was relied upon.

14. It could be seen from the evidence of MW1 that sufficient material was available to him to come to the

conclusion that the petitioner is the author of the forgery for which he was facing enquiry. It could be seen from the report that even without disclosing anything about the suspicion regarding the forgery he has made Lakshmipathy, the Clerk who posted the entry regarding the cheque as well as that of the petitioner and had compared the suspected writings and the signatures with these and had come to the conclusion that the handwriting of the petitioner is similar to the writings in the cheque Book Issue Register, the cheque and the withdrawal slip. In fact the Manager himself has immediately on examination detected that the signature in the cheque is totally different from the specimen signature and it was only because of this he did not pass the cheque.

15. Even as admitted by the petitioner he has made entry in the Cheque Book Issue Register regarding the issue of the cheque book containing the relevant cheque leaf. MW1 has gathered from NattuchalaiPanchayat Assistant that she did not get the cheque book in question. In fact only a few days ago two cheque books were issued to the Panchayat and there would not have been any necessity for her to get one more cheque book within such a short period. It could be noticed from the Cheque Book Issue Register that the entry was not authorized by the Manager. Though the cheque book was shown as issued to the Panchayat Office, except the disputed cheque leaf no other cheque leaves were used. MW1 has found that the signature in the cheque issue register as that of Panchayat Assistant Sudha is totally different from the signatures put by her earlier while receiving cheque books. MW1 has found that the handwriting in the signature itself is similar to the handwriting of the petitioner. This conclusion arrived at by MW1 is corroborated by the Forensic Report which states that the handwriting used for the signature is that of the petitioner whose admitted handwritings were compared for the purpose. This itself would show that the fact that the petitioner was sometimes asked to make entry in the Cheque Book Issue Register was misused by the petitioner to make entry to look as if the Panchayat Office Assistant has obtained another cheque book.

16. It is admitted by the petitioner that the cheque in question also was filled by him though he would not admit that the signature was put by him. There are circumstances which would clearly establish that the petitioner might have attempted to transfer Rs. 90,000/- from the account of Vinayathirthan to the account of Cholamma Devi. There was no question of Vinayathirthan issuing the cheque as he was not alive at the time of the incident. He could not have used cheque book issued to NattuchalaiPanchayat also. Probably because the account was lying inoperative for some time the petitioner has selected Vinaythirthan's account for his operation. The account of Cholamma Devi was also lying inoperative for some time. What the petitioner has stated in his explanation is that a person who is known to him had approached him and he himself had filled up the cheque and placed it in front of Lakshmipathy for posting entries. He had placed the withdrawal slip alongwith this. What mainly betrayed the petitioner is the fact that the signature of Cholamma Devi in the withdrawal slip is totally different from her specimen signature. Though the name of the account holder is Cholamma Devi, as could be seen from the specimen signature form and other documents contained in the signature she used to sign as Solamma Devi and not Cholamma Devi. On the other hand, in the withdrawal slip the signature was in the spellings of Cholamma Devi itself and not Solamma Devi. The petitioner seems to have raised a contention that he has just written the name of the Account Holder and did not put the signature However, this contention can be rejected in view of the very admission by the petitioner in his explanation that he himself had placed the withdrawal slip at the counter of Lakshmipathy. If somebody else had handed over the cheque to him he would have given the withdrawal slip to the person for putting his signature and only after this he would have placed the documents before Lakshmipathy. There is the report of the Forensic Expert that the signature on the withdrawal slip also is in the hand of the petitioner itself. This is sufficient corroboration to the conclusion drawn by MW1 during his investigation. It is very much clear that in his attempt to debit Rs. 90,000/- from the account of Vinayathirthan the petitioner had committed all the forgeries and fabrications.

17. An attempt is seen made during cross-examination of MW1 that since the cheque is in favour of Cholamma Devi, in any case transfer of the amount from the account of Vinayathirthan would not have benefited the petitioner. I do not think this contention is attractive. The petitioner was only at the initial stage of his fabrication in his attempt of misappropriation and one does not know what was the method intended by him to get at the amount.

18. The counsel for the petitioner has referred to the decision of the Apex Court in ROOP SINGH NEGI VS. PUNJAB NATIONAL BANK AND OTHERS reported in 2009 2 SCC 570 and argued that on the basis of mere suspicion a finding of guilt could not be entered into. So far as the present case is concerned it is not mere suspicion. It is very much clear from the evidence that the petitioner had committed the misconduct alleged in the charge memo. The Enquiry Officer had sufficient reasons to find him guilty of the charges.

19. I do not think there is any necessity to interfere with the punishment imposed on the petitioner also. That the bank did not lose any amount is not a reason to reduce the punishment to the petitioner. The petitioner was working in a post where utmost confidence was required and this confidence was betrayed by the petitioner by his attempted misappropriation. So the petitioner is not entitled to any relief.

20. In view of my findings above the reference is answered against the petitioner.

An award is passed accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/ Petitioner	:	WW1, Sri S. Thangavel
For the 2nd Party/ Management	:	None

Documents Marked:

On the petitioner's side

Ex.No.	Date	Description
Ex.W1	15.10.2009	Xerox copy of the Investigation Report given by the Investigation Officer
Ex.W2	22.07.2011	Xerox copy of the charge sheet issued to the petitioner
Ex.W3	20.08.2011	Xerox copy of reply/explanation given by the petitioner to the charge sheet
Ex.W4	24.08.2011	Xerox copy of letter from the Respondent appointing enquiry officer and presenting officer
Ex.W5	27.09.2011	Xerox copy of letter from the enquiry officer notifying the date of enquiry enclosing the list of documents and witnesses of the Respondent Bank
Ex.W6	11.10.2011 To 19.12.2011	Xerox copy of enquiry proceedings
Ex.W7	27.01.2012	Xerox copy of the letter from the Enquiry Officer enclosing the Presenting Officer's written brief
Ex.W8	28.02.2012	Xerox copy of defense brief submitted to the enquiry officer
Ex.W9	13.03.2012	Xerox copy of the letter from the Respondent enclosing findings of the enquiry officer
Ex.W10	13.03.2012	Xerox copy of the findings of the enquiry officer
Ex.W11	11.04.2012	Xerox copy of Petitioner's comments over the enquiry officer's findings
Ex.W12	15.05.2012	Xerox copy of notice issued by the Respondent proposing punishment and for personal hearing
Ex.W13	06.06.2012	Xerox copy of reply given by the petitioner regarding proposal of punishment
Ex.W14	12.06.2012	Xerox copy of proceedings of the personal hearing before the Disciplinary Authority
Ex.W15	22.06.2012	Xerox copy of the final order passed by the Respondent Bank imposing punishment of dismissal from service.
Ex.W16	11.08.2012	Xerox copy of petitioner's appeal to the appellate authority
Ex.W17	18.09.2012	Xerox copy of letter from Appellate Authority of the Respondent Bank calling the petitioner for personal hearing.
Ex.W18	28.09.20121	Xerox copy of the proceedings of personal hearing before the appellate authority
Ex.W19	12.11.2012	Xerox copy of the order passed by the appellate authority rejecting the appeal and confirming the punishment
Ex.W20	17.12.2012	Letter from petitioner to the Respondent Bank.

On the Management's side

Ex.No.	Date	Description
Ex.M1	-	Investigation report dated 13 &15.10.2009 with its enclosures (ME-21). The enclosures to the investigation report contains other management exhibits (2 to 7, 9 to 19 marked in the departmental proceedings)
Ex.M2	-	Report of Forensic Sciences Department, Chennai (ME-20)
Ex.M3	-	Lot cancelled sheet (ME-8).

नई दिल्ली, 2 जनवरी, 2015

का.आ. 83.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय-2, मुंबई के पंचाट (के.स.औ.अ. 10/2010) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01-01-2015 को प्राप्त हुआ था।

[सं. एल-12012/77/2009-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 2nd January, 2015

S.O. 83.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 10/2010) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of Union Bank of India and their workmen, received by the Central Government on 01.01.2015.

[No. L-12012/77/2009-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : K.B. KATAKE, Presiding Officer

REFERENCE NO. CGIT-2/10 of 2010

EMPLOYERS IN RELATION TO THE MANAGEMENT OF UNION BANK OF INDIA

The General Manager
Union Bank of India
60/80, Mumbai Samachar Marg
Fort, Mumbai 400 023.

AND

THEIR WORKMEN

Shri R.K. Palande
At Port -Acholi
Taluka Mahad
Distt. Raigad
Maharashtra

APPEARANCES:

FOR THE EMPLOYER : Ms. Prafulla Shetty, Advocate.

FOR THE WORKMAN : Ms. Kunda Samant, Advocate.

Mumbai, dated the 20thNovember, 2014

AWARD

The Government of India, Ministry of Labour& Employment by its Order No.L- 12012 /77 /2009-IR (B-II), dated 12.01.2010 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

> "Whether the action of the management of Union Bank of India in terminating the services of Shri R.K. Palande, Ex-Peon-cum-Hamal w.e.f. 25/03/2000 by way of treating him having voluntarily retired from service of the Bank and not giving him pension as per the provisions of 5th Bi-partite settlement is just, legal and proper? What relief the workman is entitled to?"

2. After receipt of the reference, notices were sent to both parties. In response to the notice, second party, appeared before this Tribunal and filed Statement of Claim at Ex-5. According to the second party workman, he was the permanent employee of Union Bank of India working at Samachar Marg Branch, Mumbai. He was recruited as Peon cum Hamal since 4/7/1978. He was permanent resident of Village Acoli, Tal. Mahad, Distt. Raigad, Maharashtra. The father of the workman was taken ill at his native place and there was nobody to look after his bed ridden father who was seriously ill. Therefore on 19/11/1999 the workman had to rush to his native place. He was required to stay there to look after his father and to provide him medical aid. He informed about it to the management vide his letter dt. 22/4/2000. The first party did not consider the request of the second party and retired him voluntarily w.e.f. 27/03/2000 under Clause 17 of 5th Bi- partite settlement. They had invoked the said clause 17 just two days prior to signing of 7th Bi partite settlement signed on 27/3/2000. In the new Bi partite Settlement Clause 17 of 5th Bi-Partite settlement was deleted.

3. The workman had opted for pension in terms of Union Bank of India Employees' Pension Regulations, 1995. He had approached the management and submitted letter with a request to reinstate him in service or at least pay him his legitimate pension. However management neither reinstated him nor paid him any pension. Therefore the workman has raised industrial dispute before ALC © Mumbai. As the conciliation failed, as per the report of ALC ©, the Central Labour Ministry sent the reference to this Tribunal. The workman therefore prays that the order of voluntary retirement be set aside and he be reinstated with back wages or the first party be directed to pay him legitimate pension since April 2000.

4. The first party resisted the statement of claim vide their written Statement at Ex-6. According to them the workman remained absent from 19.11.1999. Therefore they sent show cause notice to the known residential address as well as native place address of the workman. In-spite of that neither workman joined his duties within a period of 30 days nor offered any explanation for remaining absence. As workman remained absent, for more than 90 days and looking into his habitual absenteeism and previous record, the first party thought it fit to invoke Clause 17 of 5th Bi partite settlement, to declare him retired voluntarily w.e.f. 25/03/2000. Said voluntary retirement under Clause 17 amounts to termination of services. Therefore workman is not entitled to the pension. It was not voluntary retirement on application of the employee under Regulation 29 of Union Bank of India Employee's Pension Regulation 1995. Therefore the second party was

not entitled to get any pension. There is in ordinate delay of 9 years in raising the dispute and the reference is hit by delay and latches. For all these reasons the first party prays that the reference be dismissed for cost.

5. Following are the issues for my determination. I record my findings thereon for the reasons to follow:

Sr. No.	Issues	Findings
1.	Whether action of management of Union bank of India in terminating the services of Shri R.K. Palande, Ex-Peon cum Hamal by way of treating him having voluntarily retired and not giving him pension as per the provisions of 5th Bi-partite settlement is just legal and proper?	Yes.
2.	Whether the workman under reference is entitled to get pension/reinstatement with back wages?	Workman entitled to get pension.
3.	What relief the workman is entitled to?	As per order.
4.	What order?	As per order.

REASONS

Issues nos. 1 :-

6. In the case at hand few facts are not disputed such as the workman was the permanent employee of the first party. Secondly he was absent from duty from 19.11.1999 for more than 90 days. Therefore the first party issued show cause notice to the workman. The show cause notice was sent on the registered address of the workman as well as to his permanent address at his native place. The fact is also not disputed that as workman was continuously absent for more than 90 days and looking to his previous record and as he did not send any explanation, the first party invoked Clause 17 of 5th Bi Partite settlement and retired the workman voluntarily w.e.f. 25/03/2000 as prescribed under the said Clause. In this respect it was pointed out on behalf of the workman that the said Clause No.17 of Bi partite Settlement was arbitrary and improper, therefore it was dropped or deleted from the 7th Bi partite settlement which was signed only 2 days after the retirement of the second party. In this respect it was also argued on behalf of the second party that no opportunity was given to the workman and he was made to retire voluntarily without any inquiry. Therefore it was submitted that the said order passed by the first party violates the principles of natural justice.

7. In this respect the ld. Adv. for the first party submitted that Bi-partite settlement has effect of Statute. Therefore Clause 17 of 5th Bi partite settlement cannot be called arbitrary or unjust. Furthermore she submitted that on the relevant date said Clause 17 was very well in force. Therefore neither it can be called unjust nor the order of voluntary retirement passed there under, can be challenged. The ld. Adv for the first party further submitted that, when action is taken as per the provisions of Bi partite settlement, inquiry is not necessary.

8. In support of her argument, the ld. Adv. resorted to Bombay High Court ruling in State Bank of India V/s. M.N. Jivnani&Anr 2014 I CLR 224 (BOM). In that case the workman was absent for more than 90 days. Therefore first party therein served the workman with notice to report his duty and to explain for his unauthorised absence. The workman therein neither report for duty nor even bothered to furnish any explanation for his pretty long absence from duty. In the circumstances the bank invoked Clause 15 of Bi Partite Settlement and voluntarily retirement order was passed. The point was raised as to whether the punishment was without any inquiry was just and proper. On the point the Hon'ble Court observed that;

> "Bank has followed the requirements of Clause 16 of the Bi partite settlement. It rightly held that Dayananda has voluntarily retired from the service of the Bank. Under these circumstances it was not necessary for the Bank to hold any inquiry before passing the order. An inquiry would have been necessary if Dayananda had submitted his explanation which was not acceptable to the Bank or contended that he did report for duty but was not allowed to join by the bank."

This ruling is based on the ratio laid down by Honb'le Supreme Court in Syndicate Bank V/s. General Secretary, Syndicate Bank Staff Association &anr. 2000 II CLR 472.

9. In the case at hand the bank had sent telegram on 16/11/99 to the workman at his known address at Kalyan given by him. The workman has stated in his cross at Ex-23 that on that day he was at his native place at Mahad. He has further stated that he had not given intimation to the Bank that he had gone to Mahad. Two Registered letters were sent by the Bank, one at his address at Mahad and the other at his address at Kalyan. He admitted that till 21/12/1999 he had not given intimation to the Bank that he had left Kalyan and started residing at Mahad. The Registered letters Ex-37 were sent on the addresses given by the workman. Both the envelopes returned with remark that addressee has left address. Another two registered letters at Ex-38 & 39 were returned with same remark. It shows that First party Bank had made every effort to serve the workman with show cause notice and calling upon him to join his duties and explain about his absence.

10. In this respect ld. Adv for the first party also referred to Apex court ruling in Punjab and Sind Bank &Ors. V/s. Sakattar Singh 2001(I) CLR 468. In this case the services of workman were terminated by the Bank for unauthorized absence for about 190 days. Bank had asked him to explain his unauthorized absence. As he failed to offer any explanation, the bank terminated his services by invoking the provisions of Bi-partite settlement. High Court held termination to be illegal due to patent violation of Principles of Natural Justice. The matter was taken before Hon'ble Apex Court. The Hon'ble Apex court on the point observed that;

> "We do not find any material on record to show that he had reported for duty within the period indicated in the notice issued in terms of Clause XVI of IV Bi partite settlement. In the circumstances, we find the High Court had proceeded on an erroneous basis of non-compliance with the principles of natural justice, whereas the true content of the principles of natural justice should have been borne in mind, particularly when there was an agreement between the parties as to the manner in which the situation should be dealt with and the consequence that would ensue thereof."

The ld. Adv. on the point also referred following rulings:

(1) Syndicate Bank V/s. General Secretary, Syndicate Bank Staff Association &anr. 2000 II CLR 472.

(2) Vivekanad Shetty V/s. Chairman, J & K. Bank Ltd. &ors 2005 II CLR 527 wherein same ratio is reiterated by Hon'ble Apex Court.

11. In the case at hand though notices were sent to the workman, neither he joined his duties nor submitted his explanation for remaining absent. Therefore the first party herein has rightly invoked Clause 17 of 5th Bi-partite settlement and voluntarily retired the workman as prescribed under the said Clause. In such circumstances no inquiry was necessary and the order of voluntarily retiring the workman cannot be said in violation of Principles of Natural Justice, as has been claimed on behalf of the workman. In the light of the ratio laid down in the above rulings, I hold that inquiry was not necessary when the action was taken under Clause 17 of the Bi partite Settlement. Thus there was no violation of Principles of Natural Justice. Accordingly I decide this issue No.1 in the affirmative that, the action of the management is just and legal.

Issue No.2 & 3:-

12. In this respect as workman herein was voluntarily retired by the order passed by the management under Clause 17 of the 5th Bipartite Settlement and the said order is held just, legal and proper, thus the question of reinstatement of the workman with back-wages does not arise. Now the only question before me is whether the workman is entitled to the pension benefit. In this respect it was submitted on behalf of the first party that voluntary retirement as per order under Clause 17 of the 5th Bipartite Settlement amount to termination of services, therefore the workman is not entitled to get any pension. In this respect the ld. Adv. for the second party submitted that though workman was voluntarily retired, it was not on the basis of any inquiry report. The ld. Adv. further submitted that the workman was retired under Clause 17 without any inquiry merely as he was absent for a long period. Therefore no stigma is attributed thereto. Thus he is entitled to get all the pensionary benefits. In support of her argument the ld. Adv. resorted to Apex Court ruling in R. Kapoor V/s. Director of Inspection (Painting and Publication) Income Tax and another 1994 II CLR 885 wherein the Hon'ble Court referred its earlier judgment wherein it was observed that;

> "Pension and gratuity are no longer bounty to be distributed by the Govt to its employees on their retirement but have become under decisions of this Court, valuable right and property in their hands and culpable delay in settlement and disbursement thereof must be visited with penalty of payment of interest at current market rate till actual payment."

13. The ld. Adv. further submitted that voluntary retirement cannot be termed as termination of services. Therefore the workman cannot be deprived of his valuable right of getting pension. She further submitted that, the legislations in the field of Labour laws are beneficial legislations for the welfare of the workman and should be interpreted accordingly. In support of her argument, the ld. Adv. resorted to Apex Court ruling in Harjinder Singh V/s. Punjab State Warehouse Corporation 2010 I CLR 884 wherein the Hon'ble Court on the point observed that;

> "……High Courts are duty bound to interpret all these social welfare legislations, keeping in view foals set out in the preamble of the Constitution and provisions contained in part-IV thereof (iii) Approach of Courts must be compatible with constitutional philosophy contained in directive Principles of State Policy and workmen not to be denied the benefits, entertaining specious and untenable grounds put forward by employers."

14. In this respect the very word retirement used indicates that, it is not dismissal, termination or removal from service which deprive the employee from getting the retirement benefits. Furthermore I would also like to point out that, in number of cases, various High Courts and even Apex Court has held that even compulsory retirement without inquiry is not a stigma in the career of the employee. In the circumstances voluntary retirement cannot be termed

as termination or dismissal from service and there is no reason to withhold or refuse the pensionary benefits to the workman. The word retirement indicate something different than dismissal, termination or removal. The voluntary retirement was prescribed under Clause 17 only for continuous absence for a period 90 days or more and not for any other misconduct. The intention behind framing this Clause was; the workman who remain absent from duty continuously for number of days and did not assign any reason for his unauthorized absence can be treated as a person voluntarily retired. Neither it can be called punishment nor any stigma can be attributed thereto. Thus I hold that the workman herein is entitled to get pension from the date of his retirement i.e. 25/03/2000. He is also entitled to the interest on the arrears @ 10% p.a. Accordingly I decide this issue No.2 partly in the affirmative and proceed to pass the following order:

ORDER

(i) The reference is partly allowed with no order as to cost.

(ii) The first party is directed to pay pension to the second party workman w.e.f. 26/03/2000 as per the Rules of the Bank.

(iii) The first party is also directed to pay interest on the arrears from the due date @ 10% p.a. till the date of payment.

Date: 20/11/2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 2 जनवरी, 2015

का.आ. 84.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार मुंबई पोर्ट ट्रस्ट के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय संख्या 1, मुंबई के पंचाट (संदर्भ संख्या 45/2007) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01-01-2015 को प्राप्त हुआ था।

[सं. एल-31011/11/2007-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 2nd January, 2015

S.O. 84.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 45/2007) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 1, Mumbai as shown in the Annexure, in the industrial dispute between the management of Mumbai Port Trust and their workmen, received by the Central Government on 01.01.2015.

[No. L-31011/11/2007-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 1 AT MUMBAI

Present : Justice Satya Poot Mehrotra, Presiding Officer

REFERENCE NO. CGIT-45 OF 2007

Employers in relation to the management of :

1. The Chairman, Mumbai Port Trust, Mumbai

2. The Director, M/s. Darabshaw B. Cursetjee's Sons (Bombay), Mumbai

And

Their workman Shri Yaar Mohd. Khan

Appearances :

For the first party/ Management No.1	:	Mr. Umesh Nabar, Advocate
For the first party/ Management No.2	:	Mr. B.K. Ashok, Advocate
For the second party/Workman	:	Mr. A. M. Koyande, Advocate

Mumbai, dated this the 04th day of December, 2014

AWARD

1. By the Order dated 01/10/2007 passed in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947, the Central Government has made the present Reference to this Tribunal. The terms of Reference as per the Schedule to the said Order are as under:

> " Whether the demand of the union for correction/ rectification of the date of confirmation as 01.04.1979, instead of 05.11.1979 in respect of ShriYaarMohd. Khan, GPM working in the establishment of Mumbai Port Trust, Mumbai is proper and justified? If so, to what relief the concerned workman is entitled?"

2. Pleadings were exchanged between the parties. At present, the case is at the stage of evidence.

3. The case was lastly put up on 17/11/2014 when it was directed to be put on 4th December, 2014.

4. Pursuant to the order dated 17/11/2014, the case is put up today.

Shri Umesh Nabar, learned counsel for the first party/ Management No.1 is present.

Shri B.K. Ashok, learned counsel for the first party/ Management No.2 is present. Shri D.J. Kapadia, Representative for the first party/Management No.2 is also present.

Shri S.T. Nikam, holding brief for Shri A.M. Koyande, learned counsel for the second party/Workman is present.

Shri Yaar Mohd. Khan, second party/Workman is also present.

5. Joint application has been filed on behalf of the second party/Workman, the first party/Management No.1 and the first party/Management No. 2. It is, inter-alia, stated in the said application that both the parties have amicably settled the dispute out of Court. It is prayed in the said application that the Reference be finally disposed of in view of the settlement.

The application has been signed by the learned counsel for the second party/Workman as well as by the learned counsel for the first party/Management No.1 and the learned counsel for the first party/Management No.2.

6. Learned counsel for the parties state that in view of the averments made in the aforesaid application, the dispute forming the subject-matter of the Reference no longer survives, and the Reference may be disposed of accordingly.

Shri Yaar Mohd. Khan, second party/Workman, who is personally present before this Tribunal, states that the dispute in the present Reference has been settled out of Court and he has received an amount of Rs.28,623.45 and he is satisfied with the said payment, and he does not wish to pursue the Reference any further.

7. In view of the averments made in the aforesaid application and in view of the statements made by the learned counsel for the parties as well by the second party/ Workman, as mentioned above, it is evident that the dispute forming the subject-matter of the Reference no longer survives.

8. The Reference is therefore, answered by stating that the dispute forming the subject-matter of the Reference no longer survives.

9. Award is passed accordingly.

Justice SATYA POOT MEHROTRA, Presiding Officer

नई दिल्ली, 2 जनवरी, 2015

का.आ. 85.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार सैंट्रल बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 21/2013) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01-01-2015 को प्राप्त हुआ था।

[सं. एल-12012/17/2012-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 2nd January, 2015

S.O. 85.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 21/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Chennai as shown in the Annexure, in the industrial dispute between the management of Central Bank of India and their workmen, received by the Central Government on 01.01.2015.

[No. L-12012/17/2012-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 3rd December, 2014

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 21/2013

(In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Central Bank of India and their workman)

BETWEEN :

Sri M. Balakrishnan : 1st Party/Petitioner

AND

The General Manager Central Bank of India 48/49, Montieth Road Chennai-600008 : 2nd Party/Respondent

Appearance :

For the 1st Party/ Petitioner : M/s K.M. Ramesh, Advocates

For the 2nd Party/ Respondent : M/s T.S. Gopalan & Co., Advocates

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-12012/17/2012-IR (B.II) dated 28.01.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the Management in dismissing Sri M. Balakrishnan, Daftary of Neyveli Gangaikondan branch is legal and justified? To what relief the workman concerned is entitled?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 21/2013 and issued notices to both sides. Both sides have entered appearance through their Counsel and filed Claim and Counter Statement respectively. The petitioner has filed rejoinder in answer to the Counter Statement.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

The petitioner has joined the service of the Respondent Bank in 1984 as Part-Time Safai Karamchari. He was elevated to full time staff cadre in the year 1982 and thereafter he has been working at Gangaikondan branch of the Bank. The petitioner has been working with sincerity and loyalty for about 24 years. The petitioner's wife was a chronic cancer patient and required continuous medical investigation, monitoring and treatment. Her disease aggravated in the year 2007. During 2007-2008 he had to take her to different hospitals such as JIPMER Hospital, Stanley Hospital, Adyar Cancer Institute at Chennai, etc. for investigation and treatment. The petitioner also became sick due to mental agony and physical strain of wandering from hospitals to hospitals. The house of the petitioner remained locked for days together. During this period the house was looted and the household articles were removed. The wife of the petitioner succumbed to cancer and died in the year 2008. On the 30th day ceremony of the death of his wife the petitioner lost his younger brother in a fatal road accident. During this time the petitioner had to take leave from duty from the Bank from time to time either on leave available to his credit or even on loss of pay. The petitioner had been regularly informing the Branch Manager over phone and by telegrams regarding the plight of his wife and his need to take leave from duty. Whenever the petitioner resumed duty, he had been submitting leave application to the Manager. The Manager had been granting leave for the periods of his leave. The Manager and Staff Members of Gangaikondan branch were aware of the difficulty of the petitioner. They had visited the house of the petitioner in condolence of the death of his wife and his brother. On 26.03.2008, while the petitioner was working at the Bank, a charge sheet was delivered to him by the Manager acting as a Disciplinary Authority. Since the charge sheet was in English, the petitioner requested for 15 days time to submit his explanation and also requested for translation of the charge sheet in Tamil. On 25.09.2008 when he was at the branch he was delivered with a copy of the enquiry proceedings, Enquiry Officer's letter, Disciplinary Authority's letter with the copy of the Enquiry Officer's findings, etc. The petitioner submitted a letter on 25.09.2008 alongwith copy of the Medical Reports and Medical Certificates from various hospitals and explaining the tragic events that haunted his family. He also requested for Tamil translation of the above documents. The petitioner did not receive any reply to this. The Respondent served a Show Cause Memo dated 03.10.2008 on the petitioner asking him to show cause why penalty of removal from service proposed in the Show Cause Notice be not imposed on him. The petitioner appeared before the Respondent and explained his position. The Respondent did not give due consideration to the explanation of the petitioner. The penalty of removal from service was imposed on the petitioner. Though the petitioner preferred an appeal, this was rejected on the ground that it was not within time. It is accordingly the petitioner had raised the dispute. There is no justification in terminating the service of the petitioner. The enquiry against the petitioner was conducted ex-parte in violation of the principles of natural justice. The Enquiry Officer had not taken into consideration the leave applications, medical certificates, etc. produced by the petitioner from time to time. An order may be passed directing the Respondent to reinstate the petitioner in service with back wages, continuity of service and all other attendant benefits.

4. The Respondent has filed Counter Statement contending as follows:

The Award Staff of the Respondent are being granted very liberal leave benefits - 12 days Casual Leave, Privilege Leave of one day for every 11 days, sick leave calculated at 30 days per year, etc. Besides the leave benefits, the Bank observes national and festival holidays. An Award Staff can stay away from work without losing his earnings for 60 days in a calendar year. The petitioner who was posted to Gangaikondan branch in the year 1992 was highly irregular in his attendance. Between January 2004 and March 2008 he stayed away from work unauthorizedly for 42 days in 2004, 104 days in 2005, 98 days in 2006 and 54 days in 2007, Between 01.01.2008 and 25.03.2008 he had absented without leave for 85 days. The letters directing him to report for duty were not responded to. On 20.02.2008 a memo was issued to the petitioner pointing out his unauthorized absence for 71 days between 12.12.2007 and 20.02.2008 and directing him to report for duty. He was also asked to Show Cause why disciplinary action shall not be taken against him for his unauthorized absence. Still he did not report for duty. On 12.03.2008 charge sheet was issued to the petitioner with regard to his unauthorized absence from 12.12.2007 to 12.03.2008. Then he submitted a letter requesting for leave covering the period. He was directed to appear for an enquiry on 10.06.2008. However, the letter was returned unserved and he did not appear for enquiry. The enquiry was adjourned but on this second day of enquiry also he did not appear. Another notice was sent to him stating that enquiry will be held on 18.08.2008. In fact he received the notice on 18.08.2008 but did not appear for enquiry. On this date the enquiry was held in the absence of the petitioner. The Enquiry Officer gave report holding that the charge against the petitioner was proved. A second show cause notice was issued to the petitioner proposing the punishment of removal from service with superannuation benefits. On 14.10.2008, the Disciplinary Authority passed order confirming the punishment. Even after issue of the charge sheet the petitioner had absented without leave for 84 days between 01.04.2008 and 03.08.2008. The enquiry held into the charges against the petitioner was fair and proper.

The findings of the Enquiry Officer is supported by material available on record. The notice fixing the enquiry on 18.08.2008 was refused by the petitioner when he was working in the Bank so the Enquiry Officer was justified in proceeding to hold the enquiry in his absence. The petitioner is not entitled to any relief.

5. The petitioner has filed rejoinder denying the contentions in the counter statement and also reiterating his case in the Claim statement.

6. The evidence in the case consists of oral evidence of WW1 and MW1 and documents marked as Ext.W1 to Ext.W18 and Ext.M1 to Ext.M32.

7. **The points for consideration are:**

(i) Whether the action of the Respondent in removing the petitioner from service is justified?

(ii) What if any is the relief to which the petitioner is entitled?

The Points

8. The petitioner has been working in Gangaikondan Branch at Neyveli as Daftary. The charge sheet alleging that he has remained absent from duty unauthorizedly during the period from 12.12.2007 to 12.03.2008 for 92 days and habitually been remaining absent unauthorizedly in the past also has been served on the petitioner. Even though Show Cause Memorandum is said to have been issued prior to this, he is said to have not given any explanation, as seen from the Charge Sheet. An enquiry was ordered on the charge. According to the Respondent, even though notice was issued to the petitioner he has failed to attend the enquiry proceedings and so the Enquiry Officer was constrained to proceed ex-parte. The Enquiry Officer had entered a finding that the charges against the petitioner is established. On the basis of this finding, the petitioner was removed from service with superannuation benefits.

9. The petitioner has raised a contention in the Claim Statement that the enquiry was not conducted in a fair and proper manner but was conducted against the principles of natural justice, the same having been conducted ex-parte. In the Claim Statement as well as affidavit of Chief Examination filed by the petitioner he has refuted the contention in the Counter Statement that notice of enquiry was taken to him but he has refused to receive the notice. The stand of the petitioner is that notice was not served on him and so it was not proper for the Enquiry Officer to set him ex-parte and conduct the proceedings.

10. It is not in dispute that the copy of the charge sheet has been issued to the petitioner. It was served on the petitioner through the Branch Manager and he has signed a copy of the charge sheet in token of the receipt of the Charge Sheet. Ext.M2 the copy of the Charge Sheet produced by the Respondent contains the signature of the petitioner. It was admitted by the petitioner during the examination also that he has put his signature in the original of Ext.M2 on receipt of the Charge Sheet.

11. The dispute is regarding the method adopted by the Enquiry Officer for the conduct of the enquiry. The case of the Respondent is that twice, on 10.06.2008 and 24.07.2008 enquiry had to be postponed since the petitioner failed to appear for the enquiry and subsequently the enquiry was held on 18.08.2008 ex-parte since the petitioner has refused to receive the notice of enquiry or to appear for the enquiry. There is no case for the Respondent that notices prior to enquiry scheduled on 10.06.2008 and 24.07.2008 were received by the petitioner. The dispute is regarding the notice of enquiry scheduled for 18.08.2008 said to have been served on him. The case of the Respondent is that notices were taken to the residential address as well as branch address of the petitioner and these were returned as the petitioner refused to accept them. This is what is written in Ext.M5, the letter dated 19.08.2008 sent to the petitioner after the enquiry was held on 18.08.2008. By Ext.M5 the petitioner was asked to furnish his written submission to the enquiring authority within 8 days of the receipt of the letter. Before this Tribunal the Respondent had no case at the time of the enquiry that the notice taken to the residential address of the petitioner was served on him. The letter seems to have been returned as the petitioner was not available. However, the Respondent very much relies upon Ex.M30 the notice that was taken to the Bank, the cover of which contains the endorsement "refused". It has been brought out on cross-examination of the petitioner that he was very much present at the Bank on the particular date also. On the basis of this it has been argued by the counsel for the Respondent that the petitioner has deliberately refused the notice and has not been willing to defend the domestic enquiry proceedings initiated against him also. On the other hand, the stand of the petitioner is that in spite of the endorsement in the cover of the notice no such notice has been taken to him at all. As could be seen, apart from the endorsement itself there is no evidence to show that the notice was actually taken to the petitioner. It has been argued by the counsel for the petitioner that the document is a fabricated one and the same has never been taken to the petitioner. According to him there was no reason for the petitioner to refuse the notice. It could be seen that the notice sent to the petitioner after the enquiry proceedings was closed has been received by the petitioner at Bank's address itself. If this notice that was offered at the branch while he was in duty was accepted by the petitioner, there was no probability that the earlier notice was refused by him. More so because the petitioner has already been served with a Charge Memo and he was working at the Bank while notice informing him of an enquiry has already been received by him. It could be seen from the enquiry proceedings that the petitioner who

received Ex.M5 notice after evidence in the enquiry was closed and he asked to submit his written submission before the Enquiry Officer has appeared and presented his case before the Enquiry Officer. This also raises doubt regarding the correctness of the endorsement in the notice of enquiry scheduled to be held on 18.08.2008. It is always probable that notice for the enquiry for 18.08.2008 was not taken to him at all in view of the failed earlier attempts to serve notice on him. As could be seen from the report of the Enquiry Officer the petitioner who has appeared before him at the last stage of proceedings has pleaded that he was not able to attend the office because of the illness and death of his wife and other family problems. But this fact also is not seen considered by the Enquiry Officer. His enquiry was only to verify if the petitioner has overstayed his leave at the branch and has been absent during the period stated in the Charge Sheet. Part of the enquiry having been conducted after setting the petitioner ex-parte without proper service of notice to him, to this extent the enquiry could be said to be vitiated so far as it is not in accordance with the principles of natural justice.

12. It is not disputed by the petitioner that he was absent during the period mentioned in the Charge Sheet. There is also no case for him that he has submitted any leave application in advance for this period. The petitioner seems to have submitted an application for leave accompanied by Medical Certificate after he was served with the Charge Sheet. In fact the petitioner seems to have started to attend duty consequent to the notice that was received asking him to report for duty. It has been pointed out by the counsel for the Respondent that the petitioner has not cared even to submit an application for leave and it was utmost dereliction from duty on his part. It has also been pointed out by the counsel that in the past also the petitioner has been unauthorizedly absent on several occasions.

13. In fact in the Charge Sheet contains also a charge that the petitioner has been habitually remaining absent from duty unauthorizedly in the past. However, this charge is not seen pointedly probed by the Enquiry Officer, except entering finding based on a notice (Ext.M2) issued for absence for some days. In the Counter Statement the Respondent has stated that the petitioner was unauthorizedly absent from duty for 42 days in 2004, 104 days in 2005, 98 days in 2006 and 54 days in 2007. However, these facts were not put before the Enquiry Officer or attempted to be proved. Certainly, the petitioner has not disputed his absence during this period. But the fact remains that the absence of the petitioner for the above period has been condoned by the Bank and he has been allowed to continue in duty. The probability is that the Bank was satisfied by the explanation given by the petitioner. In the decision STATE OF PUNJAB VS. P.L. SINGLA reported in 2008 8 SCC 469 the Apex Court has held that by accepting the explanation and sanctioning leave for the period of unauthorized absence of the employee stood condoned. In such a case the charge of misconduct cannot be served and proceedings initiated for the same misconduct which has already been condoned. There is no evidence as to what was the reason for the absence of the petitioner for the previous periods mentioned in the Counter Statement. In any case it is clear that absence, even if unauthorized has been condoned by the Respondent. So the charge of habitual unauthorized absenteeism would not stand against the petitioner.

14. The question that now remains for consideration is whether the charge that the petitioner was unauthorizedly absent for the period from 12.12.2007 to 12.03.2008 is established and whether the punishment that is imposed on the petitioner is proportionate to the gravity of the misconduct allegedly committed by him. As already stated, it is not disputed by the petitioner that he was absent during the period and that application for leave has been submitted by him only after he joined duty later. The case that is put forth by the petitioner is that the circumstances prevented him from attending duty. He has got a further case that he has been informing the Branch Manager about his inability to attend duty. According to the petitioner his wife has been suffering from the illness of cancer during the period. He had been running from hospitals to hospitals for her treatment. Ultimately his wife had succumbed of illness and died at the end of 2007. According to him, during this period his house had to be kept locked and while in the locked stage his house was broke open and was looted also. He had given evidence that the Branch Manager and other staff of the Branch were well aware of his plight. He had stated in his Claim Statement as well as in his Affidavit that they had visited his house by way of condolence on the death of his wife. To add to the misery, his brother had met with a road accident on the 30th day of death of his wife and had succumbed to the accident. According to the petitioner, all these incidents which had fatally affected him made it impossible for him to attend to his work. The petitioner has also produced Ext.W1 to Ext.W4 which shows that his wife was treated at different hospitals. During cross-examination it was not challenged that the Branch Manager and other staff had been to the house of the petitioner to join him in his misery and console him on the death of his wife. So it is clear that the Manager of the Branch was very much aware of the reasons for the absence of the petitioner from duty.

15. It has been repeatedly held that if the absence from duty, even if unauthorized, is due to compelling circumstances it cannot be held to be willful. The decision KRUSHNAKANT B. PARMAR VS. UNION OF INDIA AND ANOTHER reported in Civil Appeal 2106/2012 decided on 15.02.2012 it has been held that absence due to compelling circumstances under which it was not possible to report or perform duty cannot be held to be

willful. It has also been held here that in a departmental proceeding if allegation of unauthorized absence from duty is made the Disciplinary Authority is required to prove that the absence is willful and in the absence of such finding, the absence will not amount to misconduct. In the decision in GEETABEN RATHILAL PATEL VS. DISTRICT PRIMARY EDUCATION OFFICER reported in 2013 7 SCC 182 continuous absences of 1360 days on account of mental illness was found to be under the particular circumstances and reinstatement was ordered. In the decision in CHAIRMAN-CUM-MANAGING DIRECTOR VS. MUKUL KUMAR CHOUDHARY AND OTHERS reported in 2010 2 SCC 499 where there was unauthorized absence for six months and the same was admitted, reinstatement was ordered.

16. The counsel for the Respondent has referred to the decision in CHENNAI METROPOLITAN WATER SUPPLY AND SEWERAGE BOARD AND OTHERS VS. MURALI BABU reported in 2014 4 SCC 108 where the Apex Court has held that it is not an absolute proposition in law that whenever there is long unauthorized absence it is obligatory on the part of the Disciplinary Authority to record finding of willful absence even when employee failed to show compelling circumstances while remaining absent. It was a case where the employee of unauthorizedly absented for a period of one year and seven months and had "exhibited adamant attitude in not responding to repeated communications from employer". What the Apex Court has stated in the above case is not that it is not an absolute proposition in law that whenever there is long unauthorized absence the Disciplinary Authority is to record finding that the said absence is willful even if the employee fails to show the compelling circumstances to remain absent. The Apex Court has further stated that the unauthorized absence by an employee as a misconduct cannot be put into straight jacket formula for imposition of punishment but it would depend on many a factors as has been laid down in Singla case referred to earlier. While considering the absence of the employee the Apex Court has again pointed out in the above case that by remaining unauthorizedly absent for such a long period with inadequate reason had not only shown indiscipline but also made an attempt to get away with it and such conduct is not permissible. It was in such circumstance the Apex Court favoured the punishment of dismissal from service. It could be seen from the very observation of the Apex Court that unauthorized absence without adequate reason was the reason for the imposition of extreme punishment. There is an indication in the decision that when the employee explains the compelling circumstances for his remaining absent it can be considered by the Enquiry Officer or by the Tribunal as the case may be.

17. In the present case, even when the petitioner appeared before the Enquiry Officer though at the final stage he has been trying to convince the Officer that he had to meet several unfortunate incidents including two deaths and this was the reason for his unauthorized absence. In the findings the Enquiry Officer has stated that though the petitioner has not refuted any of the argument of the Presenting Officer or objected any of the documents admitted as Management exhibits, he has narrated the illness of his wife which cost her death and has further stated that due to miseries in his life he could not attend the office. Thus the petitioner seems to have even then tried to place the compelling circumstances under which he was absent, before the Enquiry Officer.

18. In the Singla case the Apex Court has held that the extent of penalty imposed on the employee will depend upon the nature of service, the position held by him, the period of absence and the cause/explanation for the absence. The petitioner was absent for a period of 92 days as could be seen from the Charge Sheet. However, this was under compelling circumstances as explained by the petitioner during his evidence. While imposing the punishment one of the tests to be applied is whether any reasonable employer would have imposed such punishment in like circumstances taking into consideration the magnitude and degree of misconduct and all other relevant circumstances, as held by the Apex Court in MURALI BABU's case referred to earlier. When such a test is applied it is difficult to accept the argument on behalf of the Respondent that the punishment imposed on the petitioner is in proportion to the gravity of the misconduct. Except for the absence for sometime on some earlier occasions there is no case of any misconduct against the petitioner. It is very much clear that the absence for the relevant period was on account of circumstances beyond the control of the petitioner. When this is taken into account I find that the punishment is not in proportion to the degree of the misconduct.

19. The petitioner deserved a lesser punishment than removal from service for the unauthorized absence. However, the petitioner has been out of employment for a long period and withholding of pay of 75% for this period would be sufficient punishment.

20. In view of my discussion above, an award is passed as follows:

> The respondent is directed to reinstate the petitioner in service within one month of the award with back wages of 25% and continuity of service. If the back wages is not paid within a month of the award it would carry interest @ 9% per annum.
>
> The reference is answered accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/ Petitioner	:	WW1, Sri M. Balakrishnan
For the 2nd Party/ Management	:	MW1, Sri P. Richard

Documents Marked:

On the petitioner's side

Ex. No.	Date	Description
Ext.W1	14.11.2007	Copy of Jipmer Hospital, Pondicherry case summary and discharge Card of petitioner's wife.
Ex.W2	19.11.2007	Copy of Govt. Stanley Hospital, Chennai O.P. Case Sheet of petitioner's wife
Ex.W3	08.12.2007	Copy of Govt. Stanley Hospital, Chennai report of CT Scan Abdomen of petitioner's wife
Ex.W4	22.12.2007	Copy of Cancer Institute, Chennai Patient Diagnosis of petitioner's wife
Ex.W5	19.03.2008	Copy of letter from Respondent to the Petitioner
Ex.W6	12.03.2008	Copy of charge sheet issued to the petitioner
Ex.W7	02.08.2008	Copy of Medical Certificate issued to the petitioner
Ex.W8	04.08.2008	Copy of leave application submitted by the Petitioner
Ex.W9	25.09.2008	Copy of letter from petitioner to the Respondent
Ex.W10	03.10.2008	Copy of Show Cause Memo issued to the petitioner
Ex.W11	14.11.2008	Copy of Administrative Order removing the petitioner from service
Ex.W12	21.05.2009	Copy of letter from Respondent to the petitioner
Ex.W13	15.10.2009	Copy of letter from Respondent to the petitioner
Ex.W14	28.10.2009	Copy of Administrative Order rejecting the appeal of the petitioner
Ex.W15	27.12.2010	Copy of representation from petitioner to the Respondent
Ex.W16	-	Xerox copy of returned cover
Ex.W17	27.03.2008	Xerox copy of letter from petitioner to the Regional Manager, Trichy of the Respondent Bank
Ex.W18	17.02.2012	Minutes of the conciliation proceedings held before Asstt. Labour Commissioner (Central), Chennai

On the Management's side

Ex.No.	Date	Description
Ex.M1	11.07.2014	Muster Roll copies from 28.07.2008 to 30.08.2008
Ex.M2	12.03.2008	Charge Sheet issued to the petitioner – received by the petitioner on 26.03.2008 vide his endorsement in the copy of the charge sheet
Ex.M3	19.03.2008	Letter from Bank informing the petitioner that as no explanation offered decided to hold enquiry – letter received by petitioner vide his endorsement in the copy of the letter
Ex.M4	26.03.2008	Letter from the petitioner to the Bank requesting for leave covering his absence from 12.12.2007 to 25.03.2008
Ex.M5	19.08.2008	Letter from Inquiring Authority to the petitioner enclosing copy of proceedings of ex-parte enquiry held on 18.08.2008 and copies of exhibits MEX-1 to MEX-6 marked in the enquiry and calling for petitioner's written submission within 8 days – with the acknowledgement of the petitioner dated 21.08.2008
Ex.M6	19.08.2008	Letter from Bank to the CSE (M. Balakrishnan enquiry conducted by Bank was ex-parte to submit your explanation within 8 days
Ex.M7	30.05.2008	Notice of enquiry by IA (Inquiring Authority) sent to the petitioner – enquiry on 10.06.2008 – sent by RPAD and by Courier to his office address at Gangaikondan branch
Ex.M8	-	Both the above covers returned undelivered – covers un-opened
Ex.M9	10.06.2008	Proceedings of enquiry
Ex.M10	15.07.2008	Notice of enquiry by IA sent to the petitioner to his Gangaikondan branch address and to his residential address by RPAD No. RL 25593 and RL 2550 on 17.07.2008 – Posting enquiry on 24.07.2008
Ex.M11	-	Both the above covers returned undelivered – covers unopened

Ex.M12	24.07.2008	Proceedings of enquiry
Ex.M13	05.08.2008	Notice of enquiry by IA – Posting enquiry on 18.08.2008 – sent to the petitioner to his Gangaikondan branch address by RPAD RL 2644 dated 06.08.2008. Returned undelivered - as "Refused to Receive" – and the notice sent to his residential address by RPAD RL 2642 dated 06.08.2008 returned undelivered – two covers unopened – cover sent by courier – returned undelivered – but opened by Bank
Ex.M14	18.08.2008	Proceedings of enquiry
Ex.M15	12.12.2007	Attested copy of Muster roll of Gangaikondan branch – 29 sheets – covering 12.12.2007 to 12.03.2008 (MEX-1)
Ex.M16	07.02.2007	Copy of Gangaikondan branch letter addressed to charge-sheeted employee (CSE – the petitioner) (MEX-2)
Ex.M17	10.01.2008	Copy of Gangaikondan branch telegram addressed to CSE (petitioner) (MEX-3)
Ex.M18	28.01.2008	Copy of Gangaikondan Branch letter dated 28.01.2008 addressed to HRD-RO, Trichy, enclosing copy of telegram dated 28.01.2008 addressed to the CSE (MEX-4)
Ex.M19	14.02.2008	Copy of Gangaikondan branch letter dated 14.02.2008 addressed to CSE (MEX-5)
Ex.M20	14.02.2008	Copy of Gangaikondan branch central gram dated 14.02.2008 addressed to CSE (MEX 6)
Ex.M21	28.08.2008	Letter from KVS Narayanan, Presenting Officer to – EO – enclosing his (PO's) written submission in respect of M. Balakrishnan – CSE (petitioner)
Ex.M22	27.08.2008 30.08.2008	Written submission of the CSE petitioner dated 27.08.2008 received by IA on 30.08.2008
Ex.M23	02.09.2008	Letter from IA addressed to Gangaikondan branch requesting to handover PO's written submission to the CSE (petitioner) and calling for his further submission, if any. Received by the CSE (Petitioner) on 05.09.2008
Ex.M24	12.09.2008	Letter from IA to Gangaikondan Branch enclosing his (EO's) findings to the Disciplinary Authority, R.O., Trichy
Ex.M25	03.10.2008	Letter from Regional Office, Trichy u/r RO-TRY-HRD-DAD-08/09 - 30 & 31 enclosing send show cause notice dated 03.10.2008 – received by CSE on 04.10.2008 (SSC notice [RO-TRY-HRD-DAD-08-09-31] = Ex.W10)
Ex.M26	2004 2007	Details of wages paid to the petitioner between Jaunary 2004 and October 2008
Ex.M27	Oct. 2008 July 2013	The pension payable to the petitioner for the period October 2008 and July 2013
Ex.M28	-	Undelivered cover RL No. 2553
Ex.M29	-	Undelivered cover RL No. 2550
Ex.M30	-	Undelivered cover RL No. 2644
Ex.M31	-	Undelivered cover RL No. 2642
Ex.M32	-	Opened cover & courier slip.

नई दिल्ली, 2 जनवरी, 2015

का.आ. 86.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार यूनियन बैंक ऑफ इंडिया के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय, जबलपुर के पंचाट (के.स.औ.अ. 53/06) को प्रकाशित करती है, जो केन्द्रीय सरकार को 01-01-2015 को प्राप्त हुआ था।

[सं. एल-12012/37/2006-आईआर (बी-II)]

रवि कुमार, डेस्क अधिकारी

New Delhi, the 2nd January, 2015

S.O. 86.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 53/06) of the Cent. Govt. Indus. Tribunal-cum-Labour Court, Jabalpur as shown in the Annexure, in the Industrial Dispute between the management of Union Bank of India and their workmen, received by the Central Government on 01.01.2015.

[No. L-12012/37/2006-IR (B-II)]

RAVI KUMAR, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, JABALPUR

NO. CGIT/LC/R/53/06

Shri Rakh Singh Dabur,
S/o Shri Jangal Singh,
Village Mauja,
PO Tada,
Distt. Dhar (MP) ...Workman

Versus

Regional General Manager (IR),
Union Bank of India,
Vidhan Bhawan Marg,
239, Nariman Point,
Mumbai ...Management

AWARD

(Passed on this 2nd day of December, 2014)

1. As per letter dated 7-8-2006 by the Government of India, Ministry of Labour, New Delhi, the reference is received. The reference is made to this Tribunal under Section -10 of I.D.Act, 1947 as per Notification No. L-12012/37/2006-IR(B-II). The dispute under reference relates to:

> "Whether the action of the management of Regional Manager, Union Bank of India, Mumbai in terminating the services of ShriRakh Singh w.e.f. 31-12-2004 is justified? If not, to what relief the workman is entitled for?"

2. After receiving reference, notices were issued to the parties. Statement of claim is submitted on behalf of workman by Shri Ram Nagwanshi, General Secretary, Daily Wage Bank Employees Union at Page 2/2 to 2/5. Case of Ist party workman is that he was engaged from 1-8-96 on post of permanent peon on daily wages Rs. 10/- by Branch Manager Shri B.S. Chouhan in Tanda Branch. He was working with devotion. Wages were increased from Rs. 10 to 20,30,40,50, 60. He was paid wages after deducting weekly holidays. Branch Manager was paying wages drawing bogus bills in the name of persons not in existence for example Ramesh, Raju, Teju, Bhuresingh etc. he completed 240 days continuous service during each of the year, his services were terminated without notice or retrenchment compensation from 31-12-04. Name of Branch Managers under whom workman was working is given in Para-5 of statement of claim. Workman raised dispute before ALC, Bhopal. After failure report, dispute was referred by Govt. workman submits as he completed more than 240 days continuous service, he is covered as an employee under Section 25(B) of I.D.Act. that his services are terminated after 8 years in violation of Section 25-F. Principles of first come last go was not followed thereby violated Section 25 G of I.D.Act. he was not re-employed as retrenched employee. IInd party violated provisions of Section 25-F of I.D.Act. On such ground, workman prays for reinstatement with back wages.

3. IInd party submitted application for declaration that Ram Nagwanshi is not eligible to represent workman. That it is not pressed. Workman has filed Written statement at Page 8/1 to 8/10. Preliminary objection is raised that there is no Union of Daily Wage Bank Employees .said Union has no membership in Bank. It has no locus to raise dispute. Workman is not covered under Section 2(s) of I.D.act as he was not appointed by Bank. The dispute under Section 2(k) of I.D.Act is not existing. The reference made by govt. is not maintainable. There is no employer employee relationship between workman and Bank. Any of the employees of Bank are not members of the so called Union. Workman was also not member of said Union therefore Union has no locus to represent workman. It is further submitted that as per Section 22 of Trade union Act, atleast 50 % employees are required to be members of Union. The Union has not produced documents about registration under Trade Union Act. The resolution filed by Union to raise dispute of workman and authorizing office bearer for prosecuting the reference. That IInd party bank is undertaking of Govt. of India. The recruitment in the Bank is carried as per guidelines and rules, policies etc. names of candidates are called through Employment Exchange. After interview, the candidates used to be selected and appointed. No such procedure was followed in case of workman. That workman and his wife, father had taken loan of various kinds. The Ist party was not employee of Bank. There is no employer employee relationship. It is reiterated that the workman had not completed 240 days continuous service. There was no question of terminating his service in violation of Section 25-F of I.D.Act.

4. As per IInd party, workman was engaged on daily wages for fetching water in the Bank for two hours. He was paid agreed wages. Workman was never appointed by the bank. There was no employer employee relationship. Workman was not terminated by IInd party. Workman is not entitled to any relief claimed by him.

5. Ist party filed rejoinder at Page 12/1 to 12/3 reiterating his contentions in statement of claim.

6. Considering pleadings on record, the points which arise for my consideration and determination are as under. My findings are recorded against each of them for the reasons as below :-

(i) Whether the action of the management of Regional Manager, Union Bank of India, Mumbai in terminating the services of Shri Rakh Singh w.e.f. 31-12-2004 is justified?	In Affirmative
(ii) If not, what relief the workman is entitled to?"	Workman is not entitled to any relief.

REASONS

7. Workman is challenging termination of his service for violation of Section 25-F, G, H of I.D.Act. IInd party had denied employer employee relationship as workman was not appointed neither terminated by the Bank. Workman has filed affidavit of his evidence covering his contentions in statement of claim. That he was working on post of permanent peon in IInd party from 1-8-96. He was initially paid wages Rs. 10/- per day which was increased to Rs. 20,30,40,50,60. That he completed 240 days continuous service. When he was sent to Regional Office for taking stationery, he was paid Rs.50/- per day. He was paid Rs.2/- per day for service of notice, Rs.4/- per day for distribution of dak. He continuously worked more than 240 days till 31-12-04. In his cross-examination, workman says he is not carrying business. He has taken loan of Rs. 50,000/- for purchasing buffallows, 3 buffallows were purchased by him. He was getting 6 litres milk from those buffallows, he was selling milk. That his wife had taken loan of Rs. 45,000, his father had taken loan of Rs. 50,000/-. Except loan of Rs.36,000 taken by my wife, remaining loan is repaid. Grocery shop is closed. The well and pump are still existing. He was not issued appointment order. He admits his signature on document D-1 to D-20. He was called through Employment Exchange for post of Part time sweeper on 14-10-04. He was interviewed on 25-10-04 as he was found disqualified, he was not selected. The documents produced by workman Exhibit W-1 shows that workman was paid charges for water supply during the year 2002-03. W-2 shows that workman was engaged for fetching drinking water from handpump at long distance. However he was not appointed by Bank. Exhibit W-30 letter issued by Chief Manager calling information in the matter of dispute raised by workman. Exhibit W-4 is not legible. W-5 is letter issued by Chief Manager calling information w.r.t. dispute raised by workman. W-6 is also letter issued by Asstt. General Manager calling information about dispute raised by workman. W-7 is letter issued by branch manager requesting guidance in the matter of dispute raised by workman. W-8 is also letter on the same matter. Exhibit W-9 is letter given by General Manager informing that workman was not appointed. He was engaged on daily wages intermittently. W-10 shows working days of workman. In 2004, his working days are shown 210 and his working days in earlier year till 86 are shown much less than 240 days. The documents produced by workman donot show he completed 240 days continuous service during any of the year.

8. Evidence of management witness Sanjay Prasad Singh is on the point that workman was not appointed by the Bank neither he was terminated. Workman was engaged two hours for fetching drinking water from handpump. Workman was paid agreed wages for said work. His evidence in cross-examination shows he has not brought any record about the workman. That he seen record of the period 96 to 04 but he was unable to tell which record he has seen related to workman. That he has no enmity with Ram Nagwanshi. He reaffirms that the contents of his affidavit are correct. He admits that workman was doing work of fetching water is correct. Workman was paid daily wages. Management's witness denies workman was continuously working from 1995 to 2004. He denies the suggestion that he is giving false evidence.

9. The documents received under RTI Act produced by management Exhibit W-10 alongwith the annexures shows maximum working days of workman 210 in the year 2004. He had not completed 240 days continuous service therefore the evidence of workman cannot establish that workman was working more than 240 days before terminating his service. Workman is not entitled to protection under Section 25-F of I.D.Act. For above reasons, I record my finding in point No.1 in Affirmative.

10. In the result, award is passed as under:-

(1) The action of the management of Regional Manager, Union Bank of India, Mumbai in terminating the services of Shri Rakh Singh w.e.f. 31-12-2004 is proper and legal.

(2) Workman is not entitled to any relief.

R. B. PATLE, Presiding Officer

नई दिल्ली, 5 जनवरी, 2015

का.आ. 87.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार आयुक्त, दिल्ली नगर निगम, दिल्ली के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय-2, दिल्ली के पंचाट (संदर्भ संख्या 19/12) को प्रकाशित करती है जो केन्द्रीय सरकार को 05-01-2015 को प्राप्त हुआ था।

[सं. एल-42011/16/2011-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 5th January, 2015

S.O. 87.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 19/12) of the Central Government Industrial Tribunal-cum-Labour Court No.-II, Delhi now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Commissioner, MCD, Delhi and their workmen, which was received by the Central Government on 05/01/2015.

[No. L-42011/16/2011-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-II, DELHI

Present:- Shri Harbansh Kumar Saxena

ID No. 19/12

Sh. Maha Singh, S/o Late Balbir,
C/o Nagar Nigam Karmchari Sangh,
Delhi Pradesh
P/2/264, Sultan Puri Delhi.

Versus

The Commissioner,
MCD, Town Hall,
Chandni Chowk
Delhi-110006

No. DISPUTE AWARD

The Central Government in the Ministry of Labour vide notification No. L-42011/16/2011-IR(DU)) dated 29/12/2011 referred the following industrial Dispute to this tribunal for adjudication :-

> "Whether the action of the management of Municipal Corporation of Delhi, in denying the regular appointment on compassionate grounds to Sh. Maha Singh S/o Late Balbir w.e.f. 25.02.2004 is legal and justified? What relief the workman is entitled to?"

On 10.01.2012 reference was received in this tribunal. Which was register as I.D No. 19/2012 and claimant was called upon to file claim statement with in fifteen days from date of service of notice. Which was required to be accompanied with relevant documents and list of witnesses.

Several opportunities given to workman as well as management but neither workman nor management filed claim statement/Response to the reference.In this background there is no option to this tribunal except to pass No Dispute Award because parties are not interested to file their respective pleadings.

On the basis of which none of the party can be directed to adduce its evidence.

No Dispute Award is accordingly passed.

Dated:-19/12/2014

HARBANSH KUMAR SAXENA, Presiding Officer

नई दिल्ली, 5 जनवरी, 2015

का.आ. 88.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नींबू के लिए राष्ट्रीय अनुसंधान केन्द्र, नागपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी 41/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 02-01-2015 को प्राप्त हुआ था।

[सं. एल-42012/227/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 5th January, 2015

S.O. 88.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/NGP/41/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the National Research Centre for Citrus, Nagpur and their workmen, which was received by the Central Government on 02/01/2015.

[No. L-42012/227/2000-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE J.P.CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/41/2005

Date : 18.12.2014

Party No.1 : The Director,
National Research Centre for Citrus,
Amravati Road, Nagpur.

Versus

Party No.2 : Smt. Alkabai W/o Dhanpal Gajbhiye,
C/o. Ramvati Kanhayalal Ram,
Samart Ashok Chowk, Ambedkar
Nagar, Control Wadi, Nagpur-440 010.

AWARD

(Dated: 18th December, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of N.R.C.C. and their workman, Smt. Alkabai Gajbhiye, for adjudication, as per letter No.L-42012/227/2000-IR (DU) dated 18.05.2005, with the following schedule:-

> "Whether the action of the management of National Research Centre for Citrus, Nagpur in terminating the services of Smt. Alkabai W/o. Dhanpal Gajbhiye w.e.f. 03.02.2000 is legal and justified? If not, to what relief the workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Smt. Alkabai,

("the workman" in short), filed the statement of claim and the management of N.R.C.C., ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that the party No.1 is an institute controlled by the Central Government and is engaged in the activities of research and development of Citrus fruits and for the purpose of research and development, party No.1 is required to cultivate citrus plants and party No.1 is having 250 acres of agricultural land for such cultivation and for the purpose of carrying out cultivation, research and development activities, party No.1 needs workforce including skilled, semiskilled and unskilled workman and the activities of cultivation, research and development are carried out throughout the year by party No.1 by employing more than 100 workers regularly and party No. 1 sells the improved varieties of the Citrus plants to the farmers of the Area and the party No.1 is an industry within the meaning of section 2(j) of the Act.

The further case of the workman is that she was working with the party No.1 as an unskilled workman since the year 1996 continuously and uninterruptedly and she had completed continuous service of more than 240 days in the preceding calendar year prior to her illegal termination from services by party No.1 and she is a workman within the meaning of Section 2(s) of the Act and the work which she was performing was continuously available throughout the year and accordingly, she was performing the same continuously without any break and in order to defeat her righteous and just claim and in order to deny her the benefits of permanency and other ancillary benefits, the party No.1 deliberately and intentionally made a paper arrangement showing her as the workman of the contractor, Yogesh Bangre and infact she was employed by the partyNo.1 and her work was supervised by the party No.1 and she was never allotted any work by the said contractor, and the contractor was never in picture as far as her work is concerned and in case of existing of any contract between the party No.1 and the contractor, then the same was merely a camouflage and paper arrangement, in order to deny the poor workman, like her from their just and legal rights and the party No.1 was the Chief employer and the contractor was a dummy.

The workman has also pleaded that she was being paid Rs. 910/- per month towards her wages, which was far below than the rates of the minimum wages prescribed for the industry and the minimum wages enforcement officer visited the establishment of the party No. 1 on 17.12.1999, when it was noticed that the party No.1 and the contractor were grossly violating the provisions of the Minimum Wages Act and her statement and statement of her co-workers were taken by the Labour Enforcement Officer and after such inspection, the party No.1 and the contractor were required to pay her and other co-workers as per the provisions of Minimum Wages Act and therefore, the party No.1 became annoyed and decided to terminate her services and accordingly, her services were terminated on 02.03.2000 orally and her such oral termination is illegal and violative of the mandatory provisions of Section 25-F and 25-G of the Act and the same is totally unsustainable and party No.1 did not exhibit any seniority list and no notice of retrenchment was offered to her and she was also not given any retrenchment compensation prior to her termination and party No.1 retained the juniors, namely, Smt. Baby Ramaji Yadav, Sakhubai Pawar, Baby Vaske, Kokila Katamede, Nanda Ingole and Sita Ivanate, while terminating her services and as such, her oral termination dated 02.03.2000 is illegal and the same amounts to unfair labour practice and the same is liable to quash and set aside and from the date of her termination, she is not gainfully employed and after termination of her services, she sent a notice dated 05.03.2000 to the party No.1 and the same was replied by the party No.1 without complying any demand.

The workman has prayed for her reinstatement in service with continuity and full back wages and all other attending benefits thereof.

3. The party No.1 in the written statement, after denying all the adverse allegations in the statement of claim, has pleaded inter-alia that it serves as a National Laboratory for applied agricultural research on Citrus Fruits in its Orchards and farm on Amravati Road, Nagpur and its objectives are to device ways and means to create different varieties of new citrus fruits and the research work is conducted by eminent scientists for resolving problems of fundamental research, on their own and it is under the control of its parent body, the Indian Council of Agricultural Research, New Delhi (ICAR) and it is wholly financed by the Central Government and it is not directly or indirectly carrying on any trade or business and it is engaged in developing the need based technologies on various aspects of citriculture and for that, day to day requirement of maintenance of plant material, different culture practices have to be performed, which are seasonal in nature and needs performance of unskilled, semi-skilled and skilled types of jobs and the knowledge acquired as a result of research growers in India and also aboard and it is more in the nature of a governmental or sovereign function and therefore, it is outside the purview of the definition of "industry" under section 2 (j) of the Act.

It is further pleaded by party No.1 that most of the works in its experimental orchards are seasonal in nature are not available for the whole year and as such, the works are done through casual laborers and since, no regular posts are sanctioned by the government for carrying out the works, contracts are given to labour contractors by inviting quotations from different contractors, who are registered under the contract labour Act for getting the work done through casual labourer and the contractor employs his own casual labour for executing the required

work and at the end of every month raises a total bill on the basis of man days worked during the month and the bill is paid by it by cheque, as per the terms and conditions of the contract and the works are totally controlled and supervised by the contractor and the contractor maintains his register of workers.

It is also pleaded by the party No.1 that it had called for quotations from registered contractors vide circular dated 05.04.1999, in response to which eight contractors submitted their quotations and after scrutiny of job wise rates, the quotations of contractor, Yogesh Bangre dated 16.04.1999 was accepted and vide its letter dated 21.06.1999, Bangre was intimated about award of the contract to him for the period from 17.06.1999 to 16.06.2000, i.e. for a period of one year and the necessary expenditure was sanctioned by the competent authority vide order dated 29.06.1999 and thereafter, as and when there was requirement of different types of work, the contractor Bangre was asked to get the same done and Bangre had raised monthly bills giving details of the work executed on job rate basis and after scrutiny and sanction, he was paid the amount by cheque and the names of the casual labourer employed by Bangre to execute the works were never submitted to it and it was never aware of the names of the casual labourer employed between it and the workman.

The further case of the party No.1 is that the workman did not work with it as an unskilled labourer since the year 1996 and alleged and it was no knowledge that the workman was employed by the contractor and the visit of the minimum wages Enforcement Officer was for the purpose of checking as to whether the casual labourer engaged by the contractor were being paid as per the prescribed rates of minimum wages and when the same was pointed out, the contractor complied with the directions and that was all and the service of the workman was never terminated by it and Bangre, the contractor had submitted in his reply before the conciliation officer, wherein, he had stated that he was given the contract to perform the work of grass cutting by employing casual labourer and the said work was completed on 29.01.2000 and as no work was available thereafter, he could not provide any work to the workman and in view of the matter, the claim of the workman is liable to be dismissed.

4. In support of their respective claims, both the parties have led oral evidence, besides placing reliance on documentary evidence. The workman has examined herself as a witness to prove her case, whereas, Yogesh D. Bangre, the contractor has been examined as a witness by party No.1.

5. In her examination-in-chief on affidavit, the workman has reiterated the facts mentioned in the statement of claim. However, in her cross-examination, she has admitted that she was engaged in the nursery to clean the lands and to prepare the soil for plantation and she had made a complaint in writing before the ALC (C), Nagpur alongwith three others and Ext. M-II is the copy of her application before the ALC (C) and the contents of Ext. M-II are true. She has further admitted that the Labour Enforcement Officer inspect the NRCC office on 16.12.1999 and there was a meeting between the management, labour Enforcement Officer and the contractor, Yogesh Bangde and the contractor had submitted a written submission and she alongwith Devangana, Alkabai and Ramvati Ram had sent a legal notice through their advocate, Subhash Kalbande and the contents of the legal notice sent by their advocate were true and correct. The workman has further admitted in her cross-examination that the Labour Enforcement Officer found that the contractor was paying them less than the minimum wages and directed the contractor to pay the differential wages and accordingly, the contractor paid them the differential wages and a sum of Rs. 1920/- was paid to her by the contractor towards the differential wages and she has not filed any document to show that she was engaged by NRCC and her name was not sponsored by the Employment Exchange for engagement in NRCC and NRCC did not issue any appointment order. The workman has denied the suggestions that she was engaged by the contractor, Yogesh Bangde and her work was being supervised by the contractor.

6. The witness, Yogesh D. Bangde examined on behalf of the party No.1 in his examination-in-chief on affidavit has fully supported the case of the party No.1 and has stated that his quotation dated 16.04.1999 was accepted by the party No.1 and he was awarded work order dated 01.07.1999 for digging pits and filling them and he submitted his bill for that work on 06.09.1999 for Rs. 5760/- and the said amount was paid to him by party No.1 by cheque No. 431457 dated 09.07.1999 and he was given work orders dated 17.07.1999, 24.07.1999 and 31.08.1999 of basin cleaning and after completion of the said work he submitted his bills and was paid by party No.1 by cheques and he was also given work order dated 15.11.1999 and he had engaged the workman on daily wages to carry out the work orders for different periods, as and when required depending upon the period of work orders and availability of work and she had never been engaged continuously and she had not worked for 240 days before she was discontinued. This witness has further stated that he had never given the names of the labourers engaged by him to party No.1 and the workman was paid wages at the rate of minimum wages by him and on the complaint of the workman, the Enforcement Officer visited his establishment and prepared the enquiry report dated 20.12.1999 and as per the direction of the Enforcement Officer, he paid a sum of Rs. 1920/- to the workman towards the differential wages for the period from 18.10.1999 to 11.12.1999 and after completion of the contract work order, he had no work, so the workman and other labourers were discontinued and

her services were never terminated by him and her services were discontinued, because his contract was not renewed further.

This witness has also proved the documents relating to the contract and work orders given to him by party No. 1 and other documents relating to the same as Exts. M-V to M-XXIV.

In his cross-examination also, Bangde has stated that from 1999, he worked as a contractor with party No.1 and the workman was engaged by him in NRCC for doing the job works.

On perusal of the evidence of the witness examined by party No.1, it is found that though he was cross-examined at length on different aspects, there was no cross-examination in regard to the plea taken by the workman that there was never any contract between the party No.1 and Bangde and if there was any such contract, the same was merely a camouflage and paper arrangement in order to deny her just and legal right. Even no suggestion was given to the witness in that regard.

7. At the time of argument, it was submitted by the learned advocate for the workman that the party No.1 is an industry as defined in the act, as it sells the improved verities of citrus plants to the farmers of the area and the workman was working with party No.1 since 1996 continuously and uninterruptedly as an unskilled labourer and the work which the workman was performing was available throughout the year and on 03.02.2000, the services of the workman were terminated by the party No.1 orally and the workman had completed more than 240 days of work in the preceding 12 calendar months of the date of her termination and the workman was never engaged as a contract labourer by the contractor, Bangde and only to deny the workman her just and legal rights of permanency and other benefits, the party No.1 intentionally made paper arrangement to show her to be a contract labourer under the contractor and it was the party No.1, who was supervising the work of the workman and before termination of the services of the workman, the mandatory provisions of Section 25-F of the Act were not complied with and as such, the termination of the workman is illegal and there was also violation of the provisions of Sections 25-G and 25-H of the Act by the party No.1, as no seniority list was exhibited and juniors to the workman in service were retained by the party No.1 and therefore, the workman is entitled for reinstatement in service with continuity and full back wages.

In support of the submissions, the learned advocate for the workman placed reliance on the decisions reported in 2014 I CLR-159 (BSNL Vs. Bhurumal), 2014 II CLR-783 (Ita Ram Vs. P. Labour Court-cum- Industrial Tribunal and Another), 2013 (137) FLR-122 (State of Rajsthan Vs. Kaluram Gurjar) and 2012(132) FLR-746 (Oil and Natural Gas Corporation Ltd. Vs. Petroleum Employees' Union).

8. Per contra, it was submitted by the learned advocate for the party No.1 that the party No.1 serves as a National Laboratory for applied agricultural research on citrus fruits and the knowledge acquired as a result of the research is not sold, but is utilized for the benefit of the Orange or citrus fruits growers in India and aboard and it is more in the nature of a Government or sovereign function, other than a commercial venture and therefore, it is not an industry as defined in the Act.

It was further submitted by the learned advocate for the party No.1 that it is clear from the cross-examination of the workman and the documents submitted by party No.1 and specifically, Exts. M-III and M-IV that the workman was engaged by the contractor, Bangde, who had been given contract to execute different works on contract basis, after following the due procedure and the workman was never employed by party No.1 and she did not work continuously from 1996 or completed 240 days of work in the preceding 12 calendar months of the alleged date of her termination and there was no employer employee relationship between party No.1 and the workman and as such, application of the provisions of Sections 25-F, 25-G and 25-H of the Act does not arise and the reference is liable to be answered against the workman.

9. Before delving into the merit of the matter, I think it necessary to mention here that in the letter of reference sent by the Central Government for adjudication of the dispute to the Tribunal, Yogesh Bangde, the contractor had not been made a party by the Government. However, in the statement of claim, the workman has mentioned the name of Bangde as respondent No.2. It is well settled that a party cannot add somebody else as a party in the reference own his/her own, unless such person has been named as a party in the letter of reference. The workman also did not ask for permission of this Tribunal by making an application to make the above named contractor as a party. No order was passed or permission was granted by this Tribunal to the workman to add Yogesh Bangde as a party. As, the addition of Yogesh Bangde as a party is not legal, he will not be bound by the award passed in this reference.

10. Perused the record including the evidence adduced by the parties. The first contention raised by the learned advocate for the party No.1 is that party no1 is not an industry. However, after taking into consideration the pleadings of the parties, the evidence available on record and applying the principles enunciated by the Hon'ble Apex Court in the case of Bangalore Water Supply Vs. Rajappa, reported in 1978 LAB IC-467, to the present case in hand, it is found that the party No.1 is an industry and there is no force in the contention raised by the learned advocate for the party No.1 on that score.

11. Perused the record including the evidence produced by the parties. Considered the submissions made by the

learned advocates for the parties. In this case, though, it is the claim of the workman that she was employed by the party No.1 as an unskilled worker and she worked continuously from 1996 till the date of her termination on 03.02.2000 and she had worked for more than 240 days in the preceding 12 months of 03.02.2000, except her own evidence, she has not produced any document or adduced any other evidence in support of such claim. It is found from the materials on record that the workman was not engaged by the party No.1, but she was engaged by the contractor, who had been given different works on contract basis for execution by party No.1 after following the due process prescribed for the same. The documents, Exts. M-I to M-IV have been admitted into evidence on behalf of the management on admission of the same by the workman. Ext M-II is the copy of the application filed by the workman and three others, before the Assistant Labour Commissioner (Central), Nagpur for initiation of the conciliation proceeding and Ext M-III is the copy of the legal notice sent by the workman and three others to the party No.1and so also to the contractor, Yogesh Bangde, through their advocate, Subhash Kalbande. The workman in her cross-examination has admitted that the contents of Exts. M-II and M-III are true. In Exts. M-II and M-III, it has been mentioned by the workman that she was working with the party No.1 continuously and regularly for last three years and getting the wages of Rs. 35/- per day through the contractor, Yogesh Bangde. Ext. M-VII is the copy of the report submitted by the Labour Enforcement Officer (Central), after her inspection of the establishment of the contractor, Yogesh Bangde on 20.12.1999. Ext. M-VII shows that the workman was engaged as a labourer by the contractor and the contractor was paying her lesser wages than the minimum wages fixed by the Government and the said contractor was directed to pay the differential wages of Rs. 1920/- to the workman and accordingly, the contractor paid the amount of Rs. 1920/- to the workman in presence of the Labour Enforcement Officer. The workman in her evidence has admitted such facts. It is clear from the evidence on record that the workman was never engaged by party No.1 and she was engaged by the contractor.

At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the two decisions reported in 1985-II L.L.J-4 (S.C.) (The workman of the Food Corporation of India Vs M/s Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and Others Vs. National Union Water Front Workers and Others), which are squarely applicable to the case at hand.

In the decision reported in 1985-II L.L.J-4 (supra) the Hon'ble Apex Court have held that:-

> "Briefly stated, when corporation engaged a contractor for handling foodgrains at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do …….". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.
>
> Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra (1957 – I – LLJ – 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

In the decision reported in 2001 LAB IC – 3656 (supra) the Hon'ble Apex Court have held that:-

> "The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1)

by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ - 9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

It is found from the materials on record that the appointment of labour contractor by Party No. 1 for execution of different works on contract was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labor contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid her wages as their employee. It is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F of the Act or violation of the provisions of Sections 25-G and 25-H of the Act.

From the materials on record and the discussions made above, it is found that the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions cited by the learned advocate for the workman, with respect, I am of the view that the said decisions have no clear application to this case.

In view of the materials on record and the discussions made above, the reference cannot be answered in favour of the workman. Hence, it is ordered:-

ORDER

The reference is answered in the negative and against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 5 जनवरी, 2015

का.आ. 89.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नींबू के लिए राष्ट्रीय अनुसंधान केन्द्र, नागपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी 39/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 02-01-2015 को प्राप्त हुआ था।

[सं. एल-42012/229/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 5th January, 2015

S.O. 89.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/NGP/39/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the National Research Centre for Citrus, Nagpur and their workmen, which was received by the Central Government on 02/01/2015.

[No. L-42012/229/2000-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE SHRI J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No. CGIT/NGP/39/2005

Date: 18.12.2014

Party No. 1 : The Director,
National Research Centre for Citrus,
Amravati Road, Nagpur.

Versus

Party No. 2 : Smt. Devangana W/o Dilep Gaikwad,
C/o. Ramvati Kanhayalal Ram,
Samrat Ashok Chowk, Ambedkar
Nagar, Control Wadi, Nagpur-440 010.

AWARD

(Dated: 18th December, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of N.R.C.C. and their workman, Smt. Devangana Gaikwad, for adjudication, as per letter No. L-42012/229/2000-IR (DU) dated 16.05.2005, with the following schedule:-

> "Whether the action of the management of National Research Centre for Citrus, Nagpur in terminating the services of Smt. Devangana W/o. Dilip Gaikwad w.e.f. 03.02.2000 is legal and justified? If not, to what relief the workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Smt. Devangana, ("the workman" in short), filed the statement of claim and the management of N.R.C.C., ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that the party No.1 is an institute controlled by the Central Government and is engaged in the activities of research and development of Citrus fruits and for the purpose of research and development, party No.1 is required to cultivate citrus plants and party No.1 is having 250 acres of agricultural land for such cultivation and for the purpose of carrying out cultivation, research and development activities, party No.1 needs workforce including skilled, semiskilled and unskilled workman and the activities of cultivation, research and development are carried out throughout the year by party No.1 by employing more than 100 workers regularly and party No.1 sells the improved varieties of the Citrus plants to the farmers of the Area and the party No.1 is an industry within the meaning of section 2(j) of the Act.

The further case of the workman is that she was working with the party No.1 as an unskilled workman since the year 1996 continuously and uninterruptedly and she had completed continuous service of more than 240 days in the preceding calendar year prior to her illegal termination from services by party No.1 and she is a workman within the meaning of Section 2(s) of the Act and the work which she was performing was continuously available throughout the year and accordingly, she was performing the same continuously without any break and in order to defeat her righteous and just claim and in order to deny her the benefits of permanency and other ancillary benefits, the party No.1 deliberately and intentionally made a paper arrangement showing her as the workman of the contractor, Shri Yogesh Bangre and infact she was employed by the partyNo.1 and her work was supervised by the party No.1 and she was never allotted any work by the said contractor, and the contractor was never in picture as far as her work is concerned and in case of existing of any contract between the party No.1 and the contractor, then the same was merely a camouflage and paper arrangement, in order to deny the poor workman, like her from their just and legal rights and the party No.1 was the Chief employer and the contractor was a dummy.

The workman has also pleaded that she was being paid Rs. 910/- per month towards her wages, which was far below than the rates of the minimum wages prescribed for the industry and the minimum wages enforcement officer visited the establishment of the party No. 1 on 17.12.1999, when it was noticed that the party No.1 and the contractor were grossly violating the provisions of the Minimum Wages Act and her statement and statement of her co-workers were taken by the Labour Enforcement Officer and after such inspection, the party No.1 and the contractor were required to pay her and other co-workers as per the provisions of Minimum Wages Act and therefore, the party No.1 became annoyed and decided to terminate her services and accordingly, her services were terminated on 02.03.2000 orally and her such oral termination is illegal and violative of the mandatory provisions of section 25-F and 25-G of the Act and the same is totally unsustainable and party No.1 did not exhibit any seniority list and no notice of retrenchment was offered to her and she was also not given any retrenchment compensation prior to her termination and party No.1 retained the juniors, namely, Smt. Baby Ramaji Yadav, Sakhubai Pawar, Baby Vaske, Kokila Katamede, Nanda Ingole and Sita Ivanate, while terminating her services and as such, her oral termination dated 02.03.2000 is illegal and the same amounts to unfair labour practice and the same is liable to quash and set aside and from the date of her termination, she is not gainfully employed and after termination of her services, she sent a notice dated 05.03.2000 to the party No.1 and the same was replied by the party No.1 without complying any demand.

The workman has prayed for her reinstatement in service with continuity and full back wages and all other attending benefits thereof.

3. The party No.1 in the written statement, after denying all the adverse allegations in the statement of claim, has pleaded inter-alia that it serves as a National Laboratory for applied agricultural research on Citrus Fruits in its Orchards and farm on Amravati Road, Nagpur and its objectives are to device ways and means to create different varieties of new citrus fruits and the research work is conducted by eminent scientists for resolving problems of fundamental research, on their own and it is under the control of its parent body, the Indian Council of Agricultural Research, New Delhi (ICAR) and it is wholly financed by the Central Government and it is not directly or indirectly carrying on any trade or business and it is engaged in developing the need based technologies on various aspects of citriculture and for that, day to day requirement of maintenance of plant material, different culture practices have to be performed, which are seasonal in nature and needs performance of unskilled, semi-skilled and skilled types of jobs and the knowledge acquired as a result of research growers in India and also aboard and it is more in the nature of a governmental or sovereign function and therefore, it is outside the purview of the definition of "industry" under section 2 (j) of the Act.

It is further pleaded by party No.1 that most of the works in its experimental orchards are seasonal in nature are not available for the whole year and as such, the works are done through casual laborers and since, no regular posts are sanctioned by the government for carrying out the works, contracts are given to labour contractors by inviting quotations from different contractors, who are registered under the contract labour Act for getting the work done through casual labourer and the contractor employs his own casual labour for executing the required work and at the end of every month raises a total bill on the basis of man days worked during the month and the bill is paid by it by cheque, as per the terms and conditions of the contract and the works are totally controlled and supervised by the contractor and the contractor maintains his register of workers.

It is also pleaded by the party No.1 that it had called for quotations from registered contractors vide circular dated 05.04.1999, in response to which eight contractors submitted their quotations and after scrutiny of job wise rates, the quotations of contractor, Shri Yogesh Bangre dated 16.04.1999 was accepted and vide its letter dated 21.06.1999, Shri Bangre was intimated about award of the contract to him for the period from 17.06.1999 to 16.06.2000, i.e. for a period of one year and the necessary expenditure was sanctioned by the competent authority vide order dated 29.06.1999 and thereafter, as and when there was requirement of different types of work, the contractor Shri Bangre was asked to get the same done and Shri Bangre had raised monthly bills giving details of the work executed on job rate basis and after scrutiny and sanction, he was paid the amount by cheque and the names of the casual labourer employed by Shri Bangre to execute the works were never submitted to it and it was never aware of the names of the casual labourer employed between it and the workman.

The further case of the party No.1 is that the workman did not work with it as an unskilled labourer since the year 1996 and alleged and it was no knowledge that the workman was employed by the contractor and the visit of the minimum wages Enforcement Officer was for the purpose of checking as to whether the casual labourer engaged by the contractor were being paid as per the prescribed rates of minimum wages and when the same was pointed out, the contractor complied with the directions and that was all and the service of the workman was never terminated by it and Shri Bangre, the contractor had submitted in his reply before the conciliation officer, wherein, he had stated that he was given the contract to perform the work of grass cutting by employing casual labourer and the said work was completed on 29.01.2000 and as no work was available thereafter, he could not

provide any work to the workman and in view of the matter, the claim of the workman is liable to be dismissed.

4. In support of their respective claims, both the parties have led oral evidence, besides placing reliance on documentary evidence. The workman has examined herself as a witness to prove her case, whereas, Shri Yogesh D. Bangde, the contractor has been examined as a witness by party No.1.

5. In her examination-in-chief on affidavit, the workman has reiterated the facts mentioned in the statement of claim. However, in her cross-examination, she has admitted that she was engaged in the nursery to clean the lands and to prepare the soil for plantation and she had made a complaint in writing before the ALC (C), Nagpur alongwith three others and Ext. M-II is the copy of her application before the ALC (C) and the contents of Ext. M-II are true. She has further admitted that the Labour Enforcement Officer inspect the NRCC office on 16.12.1999 and there was a meeting between the management, labour Enforcement Officer and the contractor, Shri Yogesh Bangde and the contractor had submitted a written submission and she alongwith Devangana, Alkabai and Ramvati Ram had sent a legal notice through their advocate, Shri Subhash Kalbande and the contents of the legal notice sent by their advocate were true and correct. The workman has further admitted in her cross-examination that the Labour Enforcement Officer found that the contractor was paying them less than the minimum wages and directed the contractor to pay the differential wages and accordingly, the contractor paid them the differential wages and a sum of Rs. 1920/- was paid to her by the contractor towards the differential wages and she has not filed any document to show that she was engaged by NRCC and her name was not sponsored by the Employment Exchange for engagement in NRCC and NRCC did not issue any appointment order. The workman has denied the suggestions that she was engaged by the contractor, Shri Yogesh Bangde and her work was being supervised by the contractor.

7. The witness, Shri Yogesh D. Bangde examined on behalf of the party No.1 in his examination-in-chief on affidavit has fully supported the case of the party No.1 and has stated that his quotation dated 16.04.1999 was accepted by the party No.1 and he was awarded work order dated 01.07.1999 for digging pits and filling them and he submitted his bill for that work on 06.09.1999 for Rs. 5760/- and the said amount was paid to him by party No.1 by cheque No. 431457 dated 09.07.1999 and he was given work orders dated 17.07.1999, 24.07.1999 and 31.08.1999 of basin cleaning and after completion of the said work he submitted his bills and was paid by party No.1 by cheques and he was also given work order dated 15.11.1999 and he had engaged the workman on daily wages to carry out the work orders for different periods, as and when required depending upon the period of work orders and availability of work and she had never been engaged continuously and she had not worked for 240 days before she was discontinued. This witness has further stated that he had never given the names of the labourers engaged by him to party No.1 and the workman was paid wages at the rate of minimum wages by him and on the complaint of the workman, the Enforcement Officer visited his establishment and prepared the enquiry report dated 20.12.1999 and as per the direction of the Enforcement Officer, he paid a sum of Rs. 1920/- to the workman towards the differential wages for the period from 18.10.1999 to 11.12.1999 and after completion of the contract work order, he had no work, so the workman and other labourers were discontinued and her services were never terminated by him and her services were discontinued, because his contract was not renewed further.

This witness has also proved the documents relating to the contract and work orders given to him by party No. 1 and other documents relating to the same as Exts. M-V to M-XXIV.

In his cross-examination also, Shri Bangde has stated that from 1999, he worked as a contractor with party No.1 and the workman was engaged by him in NRCC for doing the job works.

On perusal of the evidence of the witness examined by party No.1, it is found that though he was cross-examined at length on different aspects, there was no cross-examination in regard to the plea taken by the workman that there was never any contract between the party No.1 and Shri Bangde and if there was any such contract, the same was merely a camouflage and paper arrangement in order to deny her just and legal right. Even no suggestion was given to the witness in that regard.

8. At the time of argument, it was submitted by the learned advocate for the workman that the party No.1 is an industry as defined in the act, as it sells the improved verities of citrus plants to the farmers of the area and the workman was working with party No.1 since 1996 continuously and uninterruptedly as an unskilled labourer and the work which the workman was performing was available throughout the year and on 03.02.2000, the services of the workman were terminated by the party No.1 orally and the workman had completed more than 240 days of work in the preceding 12 calendar months of the date of her termination and the workman was never engaged as a contract labourer by the contractor, Shri Bangde and only to deny the workman her just and legal rights of permanency and other benefits, the party No.1 intentionally made paper arrangement to show her to be a contract labourer under the contractor and it was the party No.1, who was supervising the work of the workman and before termination of the services of the workman, the mandatory provisions of section 25-F of the Act were not complied with and as such, the termination of the workman is illegal

and there was also violation of the provisions of Sections 25-G and 25-H of the Act by the party No.1, as no seniority list was exhibited and juniors to the workman in service were retained by the party No.1 and therefore, the workman is entitled for reinstatement in service with continuity and full back wages.

In support of the submissions, the learned advocate for the workman placed reliance on the decisions reported in 2014 I CLR-159 (BSNL Vs. Bhurumal), 2014 II CLR-783 (Ita Ram Vs. P. Labour Court-cum- Industrial Tribunal and another), 2013 (137) FLR-122 (State of Rajsthan Vs. Kaluram Gurjar) and 2012(132) FLR-746(Oil and Natural Gas Corporation Ltd. Vs. Petroleum Employees' Union).

9. Per contra, it was submitted by the learned advocate for the party No.1 that the party No.1 serves as a National Laboratory for applied agricultural research on citrus fruits and the knowledge acquired as a result of the research is not sold, but is utilized for the benefit of the Orange or citrus fruits growers in India and aboard and it is more in the nature of a Government or sovereign function, other than a commercial venture and therefore, it is not an industry as defined in the Act.

It was further submitted by the learned advocate for the party No.1 that it is clear from the cross-examination of the workman and the documents submitted by party No.1 and specifically, Exts. M-III and M-IV that the workman was engaged by the contractor, Shri Bangde, who had been given contract to execute different works on contract basis, after following the due procedure and the workman was never employed by party No.1 and she did not work continuously from 1996 or completed 240 days of work in the preceding 12 calendar months of the alleged date of her termination and there was no employer employee relationship between party No.1 and the workman and as such, application of the provisions of Sections 25-F, 25-G and 25-H of the Act does not arise and the reference is liable to be answered against the workman.

10. Before delving into the merit of the matter, I think it necessary to mention here that in the letter of reference sent by the Central Government for adjudication of the dispute to the Tribunal, Shri Yogesh Bangde, the contractor had not been made a party by the Government. However, in the statement of claim, the workman has mentioned the name of Shri Bangde as respondent No.2. It is well settled that a party cannot add somebody else as a party in the reference own his/her own, unless such person has been named as a party in the letter of reference. The workman also did not ask for permission of this Tribunal by making an application to make the above named contractor as a party. No order was passed or permission was granted by this Tribunal to the workman to add Shri Yogesh Bangde as a party. As, the addition of Shri Yogesh Bangde as a party is not legal, he will not be bound by the award passed in this reference.

11. Perused the record including the evidence adduced by the parties. The first contention raised by the learned advocate for the party No.1 is that party No. 1 is not an industry. However, after taking into consideration the pleadings of the parties, the evidence available on record and applying the principles enunciated by the Hon'ble Apex Court in the case of Bangalore Water Supply Vs. Rajappa, reported in 1978 LAB IC-467, to the present case in hand, it is found that the party No.1 is an industry and there is no force in the contention raised by the learned advocate for the party No.1 on that score.

12. Perused the record including the evidence produced by the parties. Considered the submissions made by the learned advocates for the parties. In this case, though, it is the claim of the workman that she was employed by the party No.1 as an unskilled worker and she worked continuously from 1996 till the date of her termination on 03.02.2000 and she had worked for more than 240 days in the preceding 12 months of 03.02.2000, except her own evidence, she has not produced any document or adduced any other evidence in support of such claim. It is found from the materials on record that the workman was not engaged by the party No.1, but she was engaged by the contractor, who had been given different works on contract basis for execution by party No.1 after following the due process prescribed for the same. The documents, Exts. M-I to M-IV have been admitted into evidence on behalf of the management on admission of the same by the workman. Ext. M-II is the copy of the application filed by the workman and three others, before the Assistant Labour Commissioner (Central), Nagpur for initiation of the conciliation proceeding and Ext. M-III is the copy of the legal notice sent by the workman and three others to the party No.1and so also to the contractor, Shri Yogesh Bangde, through their advocate, Shri Subhash Kalbande. The workman in her cross-examination has admitted that the contents of Exts. M-II and M-III are true. In Exts. M-II and M-III, it has been mentioned by the workman that she was working with the party No.1 continuously and regularly for last three years and getting the wages of Rs. 35/- per day through the contractor, Shri Yogesh Bangde. Ext. M-VII is the copy of the report submitted by the Labour Enforcement Officer (Central), after her inspection of the establishment of the contractor, Shri Yogesh Bangde on 20.12.1999. Ext. M-VII shows that the workman was engaged as a labourer by the contractor and the contractor was paying her lesser wages than the minimum wages fixed by the Government and the said contractor was directed to pay the differential wages of Rs. 1920/- to the workman and accordingly, the contractor paid the amount of Rs. 1920/- to the workman in presence of the Labour Enforcement Officer. The workman in her evidence has admitted such facts. It is clear from the evidence on record that the workman was never engaged by party No.1 and she was engaged by the contractor.

At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the two decisions reported in 1985-II L.L.J-4 (S.C.) (The workman of the Food Corporation of India Vs. M/s. Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others Vs. National Union Water Front Workers and others), which are squarely applicable to the case at hand.

In the decision reported in 1985-II L.L.J-4 (Supra) the Hon'ble Apex Court have held that:-

> "Briefly stated, when corporation engaged a contractor for handling foodgrains at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do …….". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.
>
> Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra (1957 – I – LLJ – 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

In the decision reported in 2001 LAB IC – 3656 (Supra) the Hon'ble Apex Court have held that:-

> "The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.
>
> Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to

academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ - 9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

It is found from the materials on record that the appointment of labour contractor by Party No. 1 for execution of different works on contract was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labor contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid her wages as their employee. It is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F of the Act or violation of the provisions of sections 25-G and 25-H of the Act.

From the materials on record and the discussions made above, it is found that the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions cited by the learned advocate for the workman, with respect, I am of the view that the said decisions have no clear application to this case.

In view of the materials on record and the discussions made above, the reference cannot be answered in favour of the workman. Hence, it is ordered:-

ORDER

The reference is answered in the negative and against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 5 जनवरी, 2015

का.आ. 90.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नींबू के लिए राष्ट्रीय अनुसंधान केन्द्र, नागपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी 40/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 02-01-2015 को प्राप्त हुआ था।

[सं. एल-42012/228/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 5th January, 2015

S.O. 90.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/NGP/40/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the National Research Centre for Citrus, Nagpur and their workmen, which was received by the Central Government on 02/01/2015.

[No. L-42012/228/2000-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE J. P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/40/2005

Date: 18.12.2014

Party No.1 : The Director,
National Research Centre for Citrus,
Amravati Road, Nagpur.

Versus

Party No.2 : Smt. Devkibai W/o Ramdas Talmale
C/o. Ramvati Kanhayalal Ram,
Samart Ashok Chowk, Ambedkar
Nagar, Control Wadi, Nagpur-440 010.

AWARD

(Dated: 18th December, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of N.R.C.C. and their workman, Smt. Devkibai Talmale, for adjudication, as per letter No.L-42012/228/2000-IR (DU) dated 18.05.2005, with the following schedule:-

> "Whether the action of the management of National Research Centre for Citrus, Nagpur in terminating the services of Smt. Devkibai W/o. Ramdas Talmale w.e.f. 03.02.2000 is legal and justified? If not, to what relief the workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Smt. Devkibai, ('the workman" in short), filed the statement of claim and the management of N.R.C.C., ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that the party No.1 is an institute controlled by the Central Government and is engaged in the activities of research and development of Citrus fruits and for the purpose of research and development, party No.1 is required to cultivate citrus plants and party No.1 is having 250 acres of agricultural land for such cultivation and for the purpose of carrying out cultivation, research and development activities, party No.1 needs workforce including skilled, semiskilled and unskilled workman and the activities of cultivation, research and development are carried out throughout the year by party No.1 by employing more than 100 workers regularly and party No.1 sells the improved varieties of the Citrus plants to the farmers of the Area and the party No.1 is an industry within the meaning of section 2(j) of the Act.

The further case of the workman is that she was working with the party No.1 as an unskilled workman since the year 1996 continuously and uninterruptedly and she had completed continuous service of more than 240 days in the preceding calendar year prior to her illegal termination from services by party No.1 and she is a workman within the meaning of Section 2(s) of the Act and the work which she was performing was continuously available throughout the year and accordingly, she was performing the same continuously without any break and in order to defeat her righteous and just claim and in order to deny her the benefits of permanency and other ancillary benefits, the party No.1 deliberately and intentionally made a paper arrangement showing her as the workman of the contractor, Shri Yogesh Bangre and infact she was employed by the party No.1 and her work was supervised by the party No.1 and she was never allotted any work by the said contractor, and the contractor was never in picture as far as her work is concerned and in case of existing of any contract between the party No.1 and the contractor, then the same was merely a camouflage and paper arrangement, in order to deny the poor workman, like her from their just and legal rights and the party No.1 was the Chief employer and the contractor was a dummy.

The workman has also pleaded that she was being paid Rs. 910/- per month towards her wages, which was far below than the rates of the minimum wages prescribed for the industry and the minimum wages enforcement officer visited the establishment of the party No. 1 on 17.12.1999, when it was noticed that the party No.1 and the contractor were grossly violating the provisions of the Minimum Wages Act and her statement and statement of her co-workers were taken by the Labour Enforcement Officer and after such inspection, the party No.1 and the contractor were required to pay her and other co-workers as per the provisions of Minimum Wages Act and therefore, the party No.1 became annoyed and decided to terminate her services and accordingly, her services were terminated on 02.03.2000 orally and her such oral termination is illegal and violative of the mandatory provisions of Section 25-F and 25-G of the Act and the same is totally unsustainable and party No.1 did not exhibit any seniority list and no notice of retrenchment was offered to her and she was also not given any retrenchment compensation prior to her termination and party No.1 retained the juniors, namely, Smt. Baby Ramaji Yadav, Sakhubai Pawar, Baby Vaske, Kokila Katamede, Nanda Ingole and Sita Ivanate, while terminating her services and as such, her oral termination dated 02.03.2000 is illegal and the same amounts to unfair labour practice and the same is liable to quash and set aside and from the date of her termination, she is not gainfully employed and after termination of her services, she sent a notice dated 05.03.2000 to the party No.1 and the same was replied by the party No.1 without complying any demand.

The workman has prayed for her reinstatement in service with continuity and full back wages and all other attending benefits thereof.

3. The party No.1 in the written statement, after denying all the adverse allegations in the statement of claim, has pleaded inter-alia that it serves as a National

Laboratory for applied agricultural research on Citrus Fruits in its Orchards and farm on Amravati Road, Nagpur and its objectives are to device ways and means to create different varieties of new citrus fruits and the research work is conducted by eminent scientists for resolving problems of fundamental research, on their own and it is under the control of its parent body, the Indian Council of Agricultural Research, New Delhi (ICAR) and it is wholly financed by the Central Government and it is not directly or indirectly carrying on any trade or business and it is engaged in developing the need based technologies on various aspects of citriculture and for that, day to day requirement of maintenance of plant material, different culture practices have to be performed, which are seasonal in nature and needs performance of unskilled, semi-skilled and skilled types of jobs and the knowledge acquired as a result of research growers in India and also aboard and it is more in the nature of a governmental or sovereign function and therefore, it is outside the purview of the definition of "industry" under section 2 (j) of the Act.

It is further pleaded by party No.1 that most of the works in its experimental orchards are seasonal in nature are not available for the whole year and as such, the works are done through casual laborers and since, no regular posts are sanctioned by the government for carrying out the works, contracts are given to labour contractors by inviting quotations from different contractors, who are registered under the contract labour Act for getting the work done through casual labourer and the contractor employs his own casual labour for executing the required work and at the end of every month raises a total bill on the basis of man days worked during the month and the bill is paid by it by cheque, as per the terms and conditions of the contract and the works are totally controlled and supervised by the contractor and the contractor maintains his register of workers.

It is also pleaded by the party No.1 that it had called for quotations from registered contractors vide circular dated 05.04.1999, in response to which eight contractors submitted their quotations and after scrutiny of job wise rates, the quotations of contractor, Shri Yogesh Bangre dated 16.04.1999 was accepted and vide its letter dated 21.06.1999, Shri Bangre was intimated about award of the contract to him for the period from 17.06.1999 to 16.06.2000, i.e. for a period of one year and the necessary expenditure was sanctioned by the competent authority vide order dated 29.06.1999 and thereafter, as and when there was requirement of different types of work, the contractor Shri Bangre was asked to get the same done and Shri Bangre had raised monthly bills giving details of the work executed on job rate basis and after scrutiny and sanction, he was paid the amount by cheque and the names of the casual labourer employed by Shri Bangre to execute the works were never submitted to it and it was never aware of the names of the casual labourer employed between it and the workman.

The further case of the party No.1 is that the workman did not work with it as an unskilled labourer since the year 1996 and alleged and it was no knowledge that the workman was employed by the contractor and the visit of the minimum wages Enforcement officer was for the purpose of checking as to whether the casual labourer engaged by the contractor were being paid as per the prescribed rates of minimum wages and when the same was pointed out, the contractor complied with the directions and that was all and the service of the workman was never terminated by it and Shri Bangre, the contractor had submitted in his reply before the conciliation officer, wherein, he had stated that he was given the contract to perform the work of grass cutting by employing casual labourer and the said work was completed on 29.01.2000 and as no work was available thereafter, he could not provide any work to the workman and in view of the matter, the claim of the workman is liable to be dismissed.

4. In support of their respective claims, both the parties have led oral evidence, besides placing reliance on documentary evidence. The workman has examined herself as a witness to prove her case, whereas, Shri Yogesh D. Bangre, the contractor has been examined as a witness by party No.1.

5. In her examination-in-chief on affidavit, the workman has reiterated the facts mentioned in the statement of claim. However, in her cross-examination, she has admitted that she was engaged in the nursery to clean the lands and to prepare the soil for plantation and she had made a complaint in writing before the ALC (C), Nagpur alongwith three others and Ext. M-II is the copy of her application before the ALC (C) and the contents of Ext. M-II are true. She has further admitted that the Labour Enforcement Officer inspect the NRCC office on 16.12.1999 and there was a meeting between the management, labour Enforcement Officer and the contractor, Shri Yogesh Bangde and the contractor had submitted a written submission and she alongwith Devangana, Alkabai and Ramvati Ram had sent a legal notice through their advocate, Shri Subhash Kalbande and the contents of the legal notice sent by their advocate were true and correct. The workman has further admitted in her cross-examination that the Labour Enforcement Officer found that the contractor was paying them less than the minimum wages and directed the contractor to pay the differential wages and accordingly, the contractor paid them the differential wages and a sum of Rs. 1920/- was paid to her by the contractor towards the differential wages and she has not filed any document to show that she was engaged by NRCC and her name was not sponsored by the Employment Exchange for engagement in NRCC and NRCC did not issue any appointment order. The workman has denied the suggestions that she was engaged by the contractor, Shri Yogesh Bangde and her work was being supervised by the contractor.

7. The witness, Shri Yogesh D. Bangde examined on behalf of the party No.1 in his examination-in-chief on affidavit has fully supported the case of the party No.1 and has stated that his quotation dated 16.04.1999 was accepted by the party No.1 and he was awarded work order dated 01.07.1999 for digging pits and filling them and he submitted his bill for that work on 06.09.1999 for Rs. 5760/- and the said amount was paid to him by party No.1 by cheque No. 431457 dated 09.07.1999 and he was given work orders dated 17.07.1999, 24.07.1999 and 31.08.1999 of basin cleaning and after completion of the said work he submitted his bills and was paid by party No.1 by cheques and he was also given work order dated 15.11.1999 and he had engaged the workman on daily wages to carry out the work orders for different periods, as and when required depending upon the period of work orders and availability of work and she had never been engaged continuously and she had not worked for 240 days before she was discontinued. This witness has further stated that he had never given the names of the labourers engaged by him to party No.1 and the workman was paid wages at the rate of minimum wages by him and on the complaint of the workman, the Enforcement Officer visited his establishment and prepared the enquiry report dated 20.12.1999 and as per the direction of the Enforcement Officer, he paid a sum of Rs. 1920/- to the workman towards the differential wages for the period from 18.10.1999 to 11.12.1999 and after completion of the contract work order, he had no work, so the workman and other labourers were discontinued and her services were never terminated by him and her services were discontinued, because his contract was not renewed further.

This witness has also proved the documents relating to the contract and work orders given to him by party No. 1 and other documents relating to the same as Exts. M-V to M-XXIV.

In his cross-examination also, Shri Bangde has stated that from 1999, he worked as a contractor with party No.1 and the workman was engaged by him in NRCC for doing the job works.

On perusal of the evidence of the witness examined by party No.1, it is found that though he was cross-examined at length on different aspects, there was no cross-examination in regard to the plea taken by the workman that there was never any contract between the party No.1 and Shri Bangde and if there was any such contract, the same was merely a camouflage and paper arrangement in order to deny her just and legal right. Even no suggestion was given to the witness in that regard.

8. At the time of argument, it was submitted by the learned advocate for the workman that the party No.1 is an industry as defined in the act, as it sells the improved verities of citrus plants to the farmers of the area and the workman was working with party No.1 since 1996 continuously and uninterruptedly as an unskilled labourer and the work which the workman was performing was available throughout the year and on 03.02.2000, the services of the workman were terminated by the party No.1 orally and the workman had completed more than 240 days of work in the preceding 12 colander months of the date of her termination and the workman was never engaged as a contract labourer by the contractor, Shri Bangde and only to deny the workman her just and legal rights of permanency and other benefits, the party No.1 intentionally made paper arrangement to show her to be a contract labourer under the contractor and it was the party No.1, who was supervising the work of the workman and before termination of the services of the workman, the mandatory provisions of section 25-F of the Act were not complied with and as such, the termination of the workman is illegal and there was also violation of the provisions of sections 25-G and 25-H of the Act by the party No.1, as no seniority list was exhibited and juniors to the workman in service were retained by the party No.1 and therefore, the workman is entitled for reinstatement in service with continuity and full back wages.

In support of the submissions, the learned advocate for the workman placed reliance on the decisions reported in 2014 I CLR-159 (BSNL Vs. Bhurumal), 2014 II CLR-783 (Ita Ram Vs. P. Labour Court-cum- Industrial Tribunal and another), 2013(137) FLR-122(State of Rajsthan Vs. Kaluram Gurjar) and 2012(132) FLR-746(Oil and Natural Gas Corporation Ltd. Vs. Petroleum Employees' Union).

9. Per contra, it was submitted by the learned advocate for the party No.1 that the party No.1 serves as a National Laboratory for applied agricultural research on citrus fruits and the knowledge acquired as a result of the research is not sold, but is utilized for the benefit of the Orange or citrus fruits growers in India and aboard and it is more in the nature of a Government or sovereign function, other than a commercial venture and therefore, it is not an industry as defined in the Act.

It was further submitted by the learned advocate for the party No.1 that it is clear from the cross-examination of the workman and the documents submitted by party No.1 and specifically, Exts. M-III and M-IV that the workman was engaged by the contractor, Shri Bangde, who had been given contract to execute different works on contract basis, after following the due procedure and the workman was never employed by party No.1 and she did not work continuously from 1996 or completed 240 days of work in the preceding 12 calendar months of the alleged date of her termination and there was no employer employee relationship between party No.1 and the workman and as such, application of the provisions of sections 25-F, 25-G and 25-H of the Act does not arise and the reference is liable to be answered against the workman.

10. Before delving into the merit of the matter, I think it necessary to mention here that in the letter of reference sent by the Central Government for adjudication of the dispute to the Tribunal, Shri yogesh Bangde, the contractor had not been made a party by the Government. However, in the statement of claim, the workman has mentioned the name of Shri Bangde as respondent No.2. It is well settled that a party cannot add somebody else as a party in the reference own his/her own, unless such person has been named as a party in the letter of reference. The workman also did not ask for permission of this Tribunal by making an application to make the above named contractor as a party. No order was passed or permission was granted by this Tribunal to the workman to add Shri Yogesh Bangde as a party. As, the addition of Shri Yogesh Bangde as a party is not legal, he will not be bound by the award passed in this reference.

11. Perused the record including the evidence adduced by the parties. The first contention raised by the learned advocate for the party No.1 is that party no1 is not an industry. However, after taking into consideration the pleadings of the parties, the evidence available on record and applying the principles enunciated by the Hon'ble Apex Court in the case of Bangalore Water Supply Vs. Rajappa, reported in 1978 LAB IC-467, to the present case in hand, it is found that the party No.1 is an industry and there is no force in the contention raised by the learned advocate for the party No.1 on that score.

12. Perused the record including the evidence produced by the parties. Considered the submissions made by the learned advocates for the parties. In this case, though, it is the claim of the workman that she was employed by the party No.1 as an unskilled worker and she worked continuously from 1996 till the date of her termination on 03.02.2000 and she had worked for more than 240 days in the preceding 12 months of 03.02.2000, except her own evidence, she has not produced any document or adduced any other evidence in support of such claim. It is found from the materials on record that the workman was not engaged by the party No.1, but she was engaged by the contractor, who had been given different works on contract basis for execution by party No.1 after following the due process prescribed for the same. The documents, Exts. M-I to M-IV have been admitted into evidence on behalf of the management on admission of the same by the workman. Ext M-II is the copy of the application filed by the workman and three others, before the Assistant Labour Commissioner (Central), Nagpur for initiation of the conciliation proceeding and Ext M-III is the copy of the legal notice sent by the workman and three others to the party No.1and so also to the contractor, Shri Yogesh Bangde, through their advocate, Shri Subhash Kalbande. The workman in her cross-examination has admitted that the contents of Exts. M-II and M-III are true. In Exts. M-II and M-III, it has been mentioned by the workman that she was working with the party No.1 continuously and regularly for last three years and getting the wages of Rs. 35/- per day through the contractor, Shri Yogesh Bangde. Ext. M-VII is the copy of the report submitted by the Labour Enforcement Officer (Central), after her inspection of the establishment of the contractor, Shri Yogesh Bangde on 20.12.1999. Ext. M-VII shows that the workman was engaged as a labourer by the contractor and the contractor was paying her lesser wages than the minimum wages fixed by the Government and the said contractor was directed to pay the differential wages of Rs. 1920/- to the workman and accordingly, the contractor paid the amount of Rs. 1920/- to the workman in presence of the Labour Enforcement Officer. The workman in her evidence has admitted such facts. It is clear from the evidence on record that the workman was never engaged by party No.1 and she was engaged by the contractor.

At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the two decisions reported in 1985-II L.L.J-4 (S.C.) (The workman of the Food Corporation of India Vs M/s Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others Vs. National Union Water Front Workers and others), which are squarely applicable to the case at hand.

In the decision reported in 1985-II L.L.J-4 (Supra) the Hon'ble Apex Court have held that:-

> "Briefly stated, when corporation engaged a contractor for handling foodgrains at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do …….". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being

a "workman" within the definition of the term as contained in the Act.

Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra (1957 – I – LLJ – 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

In the decision reported in 2001 LAB IC – 3656 (Supra) the Hon'ble Apex Court have held that:-

"The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ - 9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

It is found from the materials on record that the appointment of labour contractor by Party No. 1 for execution of different works on contract was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labor contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid her wages as their employee. It is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F of the Act or violation of the provisions of sections 25-G and 25-H of the Act.

From the materials on record and the discussions made above, it is found that the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions cited by the learned advocate for the workman, with respect, I am of the view that the said decisions have no clear application to this case.

In view of the materials on record and the discussions made above, the reference cannot be answered in favour of the workman. Hence, it is ordered:-

ORDER

The reference is answered in the negative and against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 5 जनवरी, 2015

का.आ. 91.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार नींबू के लिए राष्ट्रीय अनुसंधान केन्द्र, नागपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या सीजीआईटी/एनजीपी 42/2005) को प्रकाशित करती है, जो केन्द्रीय सरकार को 02-01-2015 को प्राप्त हुआ था।

[सं. एल-42012/226/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 5th January, 2015

S.O. 91.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. Case No. CGIT/NGP/42/2005) of the Central Government Industrial Tribunal-cum-Labour Court, Nagpur now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the National Research Centre for Citrus, Nagpur and their workmen, which was received by the Central Government on 02/01/2015.

[No. L-42012/226/2000-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE J.P. CHAND, PRESIDING OFFICER, CGIT-CUM-LABOUR COURT, NAGPUR

Case No.CGIT/NGP/42/2005

Date: 18.12.2014

Party No. 1 : The Director,
National Research Centre for Citrus,
Amravati Road, Nagpur.

Versus

Party No. 2 : Smt. Ramvati W/o Kanhayyalal Ram
C/o. Ramvati Kanhayalal Ram,
Samart Ashok Chowk, Ambedkar
Nagar, Control Wadi, Nagpur-440 010.

AWARD

(Dated: 18th December, 2014)

In exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of Industrial Disputes Act, 1947 (14 of 1947) ("the Act" in short), the Central Government has referred the industrial dispute between the employers, in relation to the management of N.R.C.C. and their workman, Smt. Ramvati, for adjudication, as per letter No.L-42012/226/2000-IR (DU) dated 16.05.2005, with the following schedule:-

"Whether the action of the management of National Research Centre for Citrus, Nagpur in terminating the services of Smt. Ramvati W/o. Kanhayyalal Ram w.e.f. 03.02.2000 is legal and justified? If not, to what relief the workman is entitled?"

2. On receipt of the reference, the parties were noticed to file their respective statement of claim and written statement and accordingly, the workman, Smt. Ramvati, ('the workman" in short), filed the statement of claim and the management of N.R.C.C., ("Party No. 1" in short) filed their written statement.

The case of the workman as presented in the statement of claim is that the party No.1 is an institute controlled by the Central Government and is engaged in the activities of research and development of Citrus fruits and for the purpose of research and development, party No.1 is required to cultivate citrus plants and party No.1 is having 250 acres of agricultural land for such cultivation and for the purpose of carrying out cultivation, research and development activities, party No.1 needs workforce

including skilled, semiskilled and unskilled workman and the activities of cultivation, research and development are carried out throughout the year by party No.1 by employing more than 100 workers regularly and party No.1 sells the improved varieties of the Citrus plants to the farmers of the Area and the party No.1 is an industry within the meaning of section 2(j) of the Act.

The further case of the workman is that she was working with the party No.1 as an unskilled workman since the year 1996 continuously and uninterruptedly and she had completed continuous service of more than 240 days in the preceding calendar year prior to her illegal termination from services by party No.1 and she is a workman within the meaning of section 2(s) of the Act and the work which she was performing was continuously available throughout the year and accordingly, she was performing the same continuously without any break and in order to defeat her righteous and just claim and in order to deny her the benefits of permanency and other ancillary benefits, the party No.1 deliberately and intentionally made a paper arrangement showing her as the workman of the contractor, Shri Yogesh Bangre and infact she was employed by the party No.1 and her work was supervised by the party No.1 and she was never allotted any work by the said contractor, and the contractor was never in picture as far as her work is concerned and in case of existing of any contract between the party No.1 and the contractor, then the same was merely a camouflage and paper arrangement, in order to deny the poor workman, like her from their just and legal rights and the party No.1 was the Chief employer and the contractor was a dummy.

The workman has also pleaded that she was being paid Rs. 910/- per month towards her wages, which was far below than the rates of the minimum wages prescribed for the industry and the minimum wages enforcement officer visited the establishment of the party No. 1 on 17.12.1999, when it was noticed that the party No.1 and the contractor were grossly violating the provisions of the Minimum Wages Act and her statement and statement of her co-workers were taken by the Labour Enforcement Officer and after such inspection, the party No.1 and the contractor were required to pay her and other co-workers as per the provisions of Minimum Wages Act and therefore, the party No.1 became annoyed and decided to terminate her services and accordingly, her services were terminated on 02.03.2000 orally and her such oral termination is illegal and violative of the mandatory provisions of section 25-F and 25-G of the Act and the same is totally unsustainable and party No.1 did not exhibit any seniority list and no notice of retrenchment was offered to her and she was also not given any retrenchment compensation prior to her termination and party No.1 retained the juniors, namely, Smt. Baby Ramaji Yadav, Sakhubai Pawar, Baby Vaske, Kokila Katamede, Nanda Ingole and Sita Ivanate, while terminating her services and as such, her oral termination dated 02.03.2000 is illegal and the same amounts to unfair labour practice and the same is liable to quash and set aside and from the date of her termination, she is not gainfully employed and after termination of her services, she sent a notice dated 05.03.2000 to the party No.1 and the same was replied by the party No.1 without complying any demand.

The workman has prayed for her reinstatement in service with continuity and full back wages and all other attending benefits thereof.

3. The party No.1 in the written statement, after denying all the adverse allegations in the statement of claim, has pleaded inter-alia that it serves as a National Laboratory for applied agricultural research on Citrus Fruits in its Orchards and farm on Amravati Road, Nagpur and its objectives are to device ways and means to create different varieties of new citrus fruits and the research work is conducted by eminent scientists for resolving problems of fundamental research, on their own and it is under the control of its parent body, the Indian Council of Agricultural Research, New Delhi (ICAR) and it is wholly financed by the Central Government and it is not directly or indirectly carrying on any trade or business and it is engaged in developing the need based technologies on various aspects of citriculture and for that, day to day requirement of maintenance of plant material, different culture practices have to be performed, which are seasonal in nature and needs performance of unskilled, semi-skilled and skilled types of jobs and the knowledge acquired as a result of research growers in India and also aboard and it is more in the nature of a governmental or sovereign function and therefore, it is outside the purview of the definition of "industry" under section 2 (j) of the Act.

It is further pleaded by party No.1 that most of the works in its experimental orchards are seasonal in nature are not available for the whole year and as such, the works are done through casual laborers and since, no regular posts are sanctioned by the government for carrying out the works, contracts are given to labour contractors by inviting quotations from different contractors, who are registered under the contract labour Act for getting the work done through casual labourer and the contractor employs his own casual labour for executing the required work and at the end of every month raises a total bill on the basis of man days worked during the month and the bill is paid by it by cheque, as per the terms and conditions of the contract and the works are totally controlled and supervised by the contractor and the contractor maintains his register of workers.

It is also pleaded by the party No.1 that it had called for quotations from registered contractors vide circular dated 05.04.1999, in response to which eight contractors submitted their quotations and after scrutiny of job wise rates, the quotations of contractor, Shri Yogesh Bangre

dated 16.04.1999 was accepted and vide its letter dated 21.06.1999, Shri Bangre was intimated about award of the contract to him for the period from 17.06.1999 to 16.06.2000, i.e. for a period of one year and the necessary expenditure was sanctioned by the competent authority vide order dated 29.06.1999 and thereafter, as and when there was requirement of different types of work, the contractor Shri Bangre was asked to get the same done and Shri Bangre had raised monthly bills giving details of the work executed on job rate basis and after scrutiny and sanction, he was paid the amount by cheque and the names of the casual labourer employed by shri Bangre to execute the works were never submitted to it and it was never aware of the names of the casual labourer employed between it and the workman.

The further case of the party No.1 is that the workman did not work with it as an unskilled labourer since the year 1996 and alleged and it was no knowledge that the workman was employed by the contractor and the visit of the minimum wages Enforcement officer was for the purpose of checking as to whether the casual labourer engaged by the contractor were being paid as per the prescribed rates of minimum wages and when the same was pointed out, the contractor complied with the directions and that was all and the service of the workman was never terminated by it and Shri Bangre, the contractor had submitted in his reply before the conciliation officer, wherein, he had stated that he was given the contract to perform the work of grass cutting by employing casual labourer and the said work was completed on 29.01.2000 and as no work was available thereafter, he could not provide any work to the workman and in view of the matter, the claim of the workman is liable to be dismissed.

4. In support of their respective claims, both the parties have led oral evidence, besides placing reliance on documentary evidence. The workman has examined herself as a witness to prove her case, whereas, Shri Yogesh D. Bangre, the contractor has been examined as a witness by party No.1.

5. In her examination-in-chief on affidavit, the workman has reiterated the facts mentioned in the statement of claim. However, in her cross-examination, she has admitted that she was engaged in the nursery to clean the lands and to prepare the soil for plantation and she had made a complaint in writing before the ALC (C), Nagpur alongwith three others and Ext. M-II is the copy of her application before the ALC (C) and the contents of Ext. M-II are true. She has further admitted that the Labour Enforcement Officer inspect the NRCC office on 16.12.1999 and there was a meeting between the management, labour Enforcement Officer and the contractor, Shri Yogesh Bangde and the contractor had submitted a written submission and she alongwith Devangana, Alkabai and Ramvati Ram had sent a legal notice through their advocate, Shri Subhash Kalbande and the contents of the legal notice sent by their advocate were true and correct. The workman has further admitted in her cross-examination that the Labour Enforcement Officer found that the contractor was paying them less than the minimum wages and directed the contractor to pay the differential wages and accordingly, the contractor paid them the differential wages and a sum of Rs. 1920/- was paid to her by the contractor towards the differential wages and she has not filed any document to show that she was engaged by NRCC and her name was not sponsored by the Employment Exchange for engagement in NRCC and NRCC did not issue any appointment order. The workman has denied the suggestions that she was engaged by the contractor, Shri Yogesh Bangde and her work was being supervised by the contractor.

7. The witness, Shri Yogesh D. Bangde examined on behalf of the party No.1 in his examination-in-chief on affidavit has fully supported the case of the party No.1 and has stated that his quotation dated 16.04.1999 was accepted by the party No.1 and he was awarded work order dated 01.07.1999 for digging pits and filling them and he submitted his bill for that work on 06.09.1999 for Rs. 5760/- and the said amount was paid to him by party No.1 by cheque No. 431457 dated 09.07.1999 and he was given work orders dated 17.07.1999, 24.07.1999 and 31.08.1999 of basin cleaning and after completion of the said work he submitted his bills and was paid by party No.1 by cheques and he was also given work order dated 15.11.1999 and he had engaged the workman on daily wages to carry out the work orders for different periods, as and when required depending upon the period of work orders and availability of work and she had never been engaged continuously and she had not worked for 240 days before she was discontinued. This witness has further stated that he had never given the names of the labourers engaged by him to party No.1 and the workman was paid wages at the rate of minimum wages by him and on the complaint of the workman, the Enforcement Officer visited his establishment and prepared the enquiry report dated 20.12.1999 and as per the direction of the Enforcement Officer, he paid a sum of Rs. 1920/- to the workman towards the differential wages for the period from 18.10.1999 to 11.12.1999 and after completion of the contract work order, he had no work, so the workman and other labourers were discontinued and her services were never terminated by him and her services were discontinued, because his contract was not renewed further.

This witness has also proved the documents relating to the contract and work orders given to him by party No. 1 and other documents relating to the same as Exts. M-V to M-XXIV.

In his cross-examination also, Shri Bangde has stated that from 1999, he worked as a contractor with party No.1

and the workman was engaged by him in NRCC for doing the job works.

On perusal of the evidence of the witness examined by party No.1, it is found that though he was cross-examined at length on different aspects, there was no cross-examination in regard to the plea taken by the workman that there was never any contract between the party No.1 and shri Bangde and if there was any such contract, the same was merely a camouflage and paper arrangement in order to deny her just and legal right. Even no suggestion was given to the witness in that regard.

8. At the time of argument, it was submitted by the learned advocate for the workman that the party No.1 is an industry as defined in the act, as it sells the improved verities of citrus plants to the farmers of the area and the workman was working with party No.1 since 1996 continuously and uninterruptedly as an unskilled labourer and the work which the workman was performing was available throughout the year and on 03.02.2000, the services of the workman were terminated by the party No.1 orally and the workman had completed more than 240 days of work in the preceding 12 calendar months of the date of her termination and the workman was never engaged as a contract labourer by the contractor, Shri Bangde and only to deny the workman her just and legal rights of permanency and other benefits, the party No.1 intentionally made paper arrangement to show her to be a contract labourer under the contractor and it was the party No.1, who was supervising the work of the workman and before termination of the services of the workman, the mandatory provisions of section 25-F of the Act were not complied with and as such, the termination of the workman is illegal and there was also violation of the provisions of sections 25-G and 25-H of the Act by the party No.1, as no seniority list was exhibited and juniors to the workman in service were retained by the party No.1 and therefore, the workman is entitled for reinstatement in service with continuity and full back wages.

In support of the submissions, the learned advocate for the workman placed reliance on the decisions reported in 2014 I CLR-159 (BSNL Vs. Bhurumal), 2014 II CLR-783 (Ita Ram Vs. P. Labour Court-cum- Industrial Tribunal and another), 2013(137) FLR-122(State of Rajsthan Vs. Kaluram Gurjar) and 2012(132) FLR-746(Oil and Natural Gas Corporation Ltd. Vs. Petroleum Employees' Union).

9. Per contra, it was submitted by the learned advocate for the party No.1 that the party No.1 serves as a National Laboratory for applied agricultural research on citrus fruits and the knowledge acquired as a result of the research is not sold, but is utilized for the benefit of the Orange or citrus fruits growers in India and aboard and it is more in the nature of a Government or sovereign function, other than a commercial venture and therefore, it is not an industry as defined in the Act.

It was further submitted by the learned advocate for the party No.1 that it is clear from the cross-examination of the workman and the documents submitted by party No.1 and specifically, Exts. M-III and M-IV that the workman was engaged by the contractor, Shri Bangde, who had been given contract to execute different works on contract basis, after following the due procedure and the workman was never employed by party No.1 and she did not work continuously from 1996 or completed 240 days of work in the preceding 12 calendar months of the alleged date of her termination and there was no employer employee relationship between party No.1 and the workman and as such, application of the provisions of Sections 25-F, 25-G and 25-H of the Act does not arise and the reference is liable to be answered against the workman.

10. Before delving into the merit of the matter, I think it necessary to mention here that in the letter of reference sent by the Central Government for adjudication of the dispute to the Tribunal, Shri yogesh Bangde, the contractor had not been made a party by the Government. However, in the statement of claim, the workman has mentioned the name of Shri Bangde as respondent No.2. It is well settled that a party cannot add somebody else as a party in the reference own his/her own, unless such person has been named as a party in the letter of reference. The workman also did not ask for permission of this Tribunal by making an application to make the above named contractor as a party. No order was passed or permission was granted by this Tribunal to the workman to add shri Yogesh Bangde as a party. As, the addition of Shri Yogesh Bangde as a party is not legal, he will not be bound by the award passed in this reference.

11. Perused the record including the evidence adduced by the parties. The first contention raised by the learned advocate for the party No.1 is that party No. 1 is not an industry. However, after taking into consideration the pleadings of the parties, the evidence available on record and applying the principles enunciated by the Hon'ble Apex Court in the case of Bangalore Water Supply Vs. Rajappa, reported in 1978 LAB IC-467, to the present case in hand, it is found that the party No.1 is an industry and there is no force in the contention raised by the learned advocate for the party No.1 on that score.

12. Perused the record including the evidence produced by the parties. Considered the submissions made by the learned advocates for the parties. In this case, though, it is the claim of the workman that she was employed by the party No.1 as an unskilled worker and she worked continuously from 1996 till the date of her termination on 03.02.2000 and she had worked for more than 240 days in the preceding 12 months of 03.02.2000, except her own evidence, she has not produced any document or adduced any other evidence in support of such claim. It is found from the materials on record that the workman was not

engaged by the party No.1, but she was engaged by the contractor, who had been given different works on contract basis for execution by party No.1 after following the due process prescribed for the same. The documents, Exts. M-I to M-IV have been admitted into evidence on behalf of the management on admission of the same by the workman. Ext M-II is the copy of the application filed by the workman and three others, before the Assistant Labour Commissioner (Central), Nagpur for initiation of the conciliation proceeding and Ext M-III is the copy of the legal notice sent by the workman and three others to the party No.1and so also to the contractor, Shri Yogesh Bangde, through their advocate, Shri Subhash Kalbande. The workman in her cross-examination has admitted that the contents of Exts. M-II and M-III are true. In Exts. M-II and M-III, it has been mentioned by the workman that she was working with the party No.1 continuously and regularly for last three years and getting the wages of Rs. 35/- per day through the contractor, Shri Yogesh Bangde. Ext. M-VII is the copy of the report submitted by the Labour Enforcement Officer (Central), after her inspection of the establishment of the contractor, Shri Yogesh Bangde on 20.12.1999. Ext. M-VII shows that the workman was engaged as a labourer by the contractor and the contractor was paying her lesser wages than the minimum wages fixed by the Government and the said contractor was directed to pay the differential wages of Rs. 1920/- to the workman and accordingly, the contractor paid the amount of Rs. 1920/- to the workman in presence of the Labour Enforcement Officer. The workman in her evidence has admitted such facts. It is clear from the evidence on record that the workman was never engaged by party No.1 and she was engaged by the contractor.

At this juncture, I think it apropos to mention about the principles enunciated by the Hon'ble Apex Court regarding contract labours, in the two decisions reported in 1985-II L.L.J-4 (S.C.) (The workman of the Food Corporation of India Vs M/s Food Corporation of India) and 2001 LAB IC 3656 (S.C.) (Steel Authority of India Ltd. and others Vs. National Union Water Front Workers and others), which are squarely applicable to the case at hand.

In the decision reported in 1985-II L.L.J-4 (supra) the Hon'ble Apex Court have held that:-

> "Briefly stated, when corporation engaged a contractor for handling foodgrains at Siliguri Depot, the corporation had nothing to do with the manner of handling work done by the contractor, the labour force employed by him, payments made by him etc. In such a fact situation, there was no privity of contract of employer and workmen between the corporation and the workmen. "Workmen" has been defined (omitting the words not necessary) in the Industrial Disputes Act to mean (any person including an apprentice) employed in any industry to do …….". 'The expression' employed has at least two known connotations, but as used in the definition, the context would indicate that it is used in the sense of a relationship brought about by express or implied contract of service in which the employee renders service for which he is engaged by the employer and the latter agrees to pay him in cash or kind as agreed between them or statutorily prescribed. It discloses a relationship of command and obedience. The essential condition of a person being a workman within the terms of the definition is that he should be employed to do the work in that industry and that there should be, in other words, an employment of his by the employer and that there should be a relationship between the employer and employee or master and servant unless a person is thus employed there can be no question of his being a "workman" within the definition of the term as contained in the Act.
>
> Dharangadhara Chemical Works Ltd. Vs. State of Saurashtra (1957 – I – LLJ – 477). Now where a contractor employs a workman to do the work which he contracted with a third person to accomplish on the definition as it stands, the workman of the contractor would not without something more become the workman of that third person. Therefore, when the workmen employed by the contractor were certainly not the workmen of the corporation and no claim to that effect has been made by the union."

In the decision reported in 2001 LAB IC – 3656 (supra) the Hon'ble Apex Court have held that:-

> "The principle that a beneficial legislation needs to be constructed liberally in favour of the class for whose benefit it is intended, does not extend to reading in the provisions of the Act what the Legislature has not provided whether expressly or by necessary implication, or substituting remedy or benefits for that provided by the Legislature. The intendment of the CLRA Act is to regulate the conditions of service of the contract labour and to authorize in Section 10(1) prohibition of contract labour system by the appropriate Government on consideration of factors enumerated in sub-section (2) of Section 10 of the Act among other relevant factors. But, the presence of some or all those factors, provide no ground for absorption of contract labour on issuing notification under Section 10(1) by the appropriate Government, is not alluded to either in Section 10 or at any other place in the Act and the consequence of violation of Sections 7 and 12 of the CLRA Act is explicitly provided in Sections 23 and 25 of the CLRA Act, it is not for the High Courts or the Supreme Court to read in some unspecified remedy in Section 10 or substitute for

penal consequences specified in Sections 23 and 25 a different sequel be it absorption of contract labour in the establishment of principal employer or a lesser or a harsher punishment. Such an interpretation of the provisions of the statute will be far beyond the principle of ironing out the creases and the scope of interpretative legislation and as such clearly impermissible.

Thus on issuance of prohibition notification under S. 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit there under. If the contract is found to be not genuine but a mere camouflage, the so called contract labour will have to be treated as employees of the principal employer who shall be directed to regularize the services of the contract labour in the concerned establishment. If the contract is found to be genuine and the principal employer intends to employ regular workmen he shall give preference to the erstwhile contract labour. It otherwise found suitable, and, if necessary, by relaxing the condition as to maximum age appropriately taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications.

Air India's case 1997 AIR SCW430 Overruled prospectively. M.A.T. Nos. 1704 and 1705 of 1999, D/ - 12-8-1999 (Cal): C.O. No. 6545(W) if 1996, D/ -9-5-1997(Cal): W.A. Nos. 345-354 of 1997m D/ - 17-4-1998 (Kant): W.P. No. 4050 of 1999, D/ - 2-8-2000 (Bom) and W.P. No. 2616 of 1999, D/ - 23-12-1999 (Bom), 1998 Lab IC 2571 (Cal), Reversed.

It cannot be said that by virtue of engagement of contract labour by the contractor in any work of or in connection with the work of an establishment, the relationship of master and servant is created between the principal employer and the contract labour. Even a combined reading of the definition of the terms "Contract labour", "Establishment" and "Workman" does not show that the legal relationship between the person employed in any industry and the owner of the industry is created irrespective of the fact as to who has brought about such relationship. The word "Workman" is defined in wide terms. It is a generic term of which contract labour is a species. It is true that combined reading of the terms "Establishment" and "Workman" shows that a workman engaged in any establishment would have direct relationship with the principal employer as a servant of master. But what is true of a workman could not be correct of contract labour. When the provisions of the Act neither contemplate creation of direct relationship of master and servant between the principal employer and the contract labour nor can such relationship be implied from the provisions of the action issuing notification under Section 10(1) of the CLRA Act. A fortiori much less can such a relationship be found to exist from the rules and the forms made there under."

So, keeping in view the principles enunciated by the Hon'ble Apex Court in the decisions mentioned above, the present case in hand is to be considered.

It is found from the materials on record that the appointment of labour contractor by Party No. 1 for execution of different works on contract was genuine and the same was not only on papers as claimed by the workman. The workman has failed to prove such claim by adducing cogent or reliable evidence. The engagement of labor contractor by Party No. 1 was not a mere ruse or camouflage to evade compliance of the various beneficial legislations, so as to deprive the workman of the benefits there under. The workman has not been able to produce any document to show that at any point of time, Party No. 1 paid her wages as their employee. It is clear from the evidence on record that the workman was engaged as a contract labour with Party No. 1, by the contractor and as such, it can be held that there was no relationship of master and servant between the Party No. 1 and the workman. Hence, there was no question of termination of the services by the Party No. 1 or compliance of the provisions of Sections 25-F of the Act or violation of the provisions of sections 25-G and25-H of the Act.

From the materials on record and the discussions made above, it is found that the facts and circumstances of the case in hand are quite different from the facts and circumstances of the cases referred in the decisions cited by the learned advocate for the workman, with respect, I am of the view that the said decisions have no clear application to this case.

In view of the materials on record and the discussions made above, the reference cannot be answered in favour of the workman. Hence, it is ordered:-

ORDER

The reference is answered in the negative and against the workman. The workman is not entitled to any relief.

J. P. CHAND, Presiding Officer

नई दिल्ली, 5 जनवरी, 2015

का.आ. 92.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 34/1999) को प्रकाशित करती है जो केन्द्रीय सरकार को 05-01-2015 को प्राप्त हुआ था।

[सं. एल-20012/764/1997-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 5th January, 2015

S.O. 92.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 34/1999) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 05.01.2015.

[No. L-20012/764/1997-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act,1947.

REFERENCE NO. 34 OF 1999

PARTIES : The Jt. General Secretary,
Rastriya Colliery Mazdoor Sangh,
Rajender Path, Dhanbad

Vs.

General Manager,
Sijua Area of M/s BCCL, PO : Sijua,
Dhanbad.
Ministry's Order No. L-20012/764/97-IR (C-I) dt.18.1.1999

APPEARANCES :

On behalf of the workman/Union : Mr. N.G.Arun, Union Rep-cum-Ld. Advocate

On behalf of the Management : Mr. D.K.Verma, Ld. Adv.

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 25th Nov., 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10 (1) (d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/764/97-IR(C-I) dt.18.1.1999.

SCHEDULE

"Whether the action of the Management of Loyabad Colliery of M/s BCCL in not providing employment to the dependant son-in-law Sh.Lakhan Chere of Smt Rajmatia Cherin Ex-Crusher Mazdoor is legal & justified? If not, to what relief Sh.Lakhan Chero, dependant son-in-law of Smt.Rajmatia Cherin is entitled?"

On receipt of the Order No. L-20012/764/97-IR(C-I) dt.18.1.1999 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No.34 of 1999 was registered on 02.02.1999 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own respective Ld.Counsels appeared in, and contested the case.

2. The case of petitioner Lakhan Chero as sponsored by the Rastriya Colliery Mazdoor Sangh is that his mother-in-law workwoman Rajmatia Cherin had been working as a crusher Mazdoor at Loyabad Colliery of M/s BCCL.She had opted for resignation under the Voluntary Retirement Scheme (herein after referred as to V.R.S.) on 3.12.1991 at the offer of an employment to her dependant son-in-law petitioner in lieu of his service, as she had not any male member of her family as also per her family detail family Certificate which was granted by the Mukhiya,the Gram Sevak and the B.D.O. after due investigation. The petitioner was also granted by them the Certificate of his relationship with the workwoman. All the relevant papers of her resignation under the V.R.S were finally recommended and forwarded to the Dy.Chief Personnel Manager,Sijua Area.As per the Letter No. 87B/2/92 dt. 20.1.1992 of the Dy. Personnel Manager, Loyabad Colliery. The approval for the appointment of the petitioner as per the H.Qr.'s Letter NO.BCCL/PA-II/VRS/(F) Ar./V/92/4148-49 dt. 24.4.1992, the Dy.Chief Personnel Manager, Sijua Area, had informed of it to the Management of all concerned collieries through his letter No. GM/SA/PD/

VRS(F)/3279/92 dt.18.5.1992 also twice communicated as per his letter dt.4.6.92 about the acceptance of her resignation and approval of the proposal for offering the employment to the petitioner as her dependant. Later on, the Dy.Chief Mining Engineer of the Loyabad Colliery had published on the Notice Board affixing the photographs of the petitioner as son-in-law of Smt.Rajmativ Cherin with a view to confirm the relationship between them. Both of them were also communicated about it as per the letter No.87/B/10/92 dt.9.6.1992 of the aforesaid Dy.Chief Mining Engineer

3. Thereafter the Management referred the petitioner to the Area Medical Board for his medical fitness. The Medical Board found him medically fit for employment. Despite the fulfillment of all the criteria fixed for acceptance of resignation by Smt.Rajmatia Cherin, her dependant son-in-law petitioner was not offered by the Management an employment whereas many dependants of other female workers under the V.R.S. were offered employment in lieu of their services, though her resignation could not be accepted during the service tenure due to the faults of the Management. This discriminatory action of the Management is a violation of the Certified Standing Order applicable to M/s BCCL.The action of the Management is not justified.Hence,the demand of the Union petitioner is legal and justified.Lastly,the Industrial dispute was raised before the ALC©,Dhanbad ,but due to the failure of its conciliation resulted in the reference for an adjudication.

The Union in its rejoinder has specifically denied all the allegations of the OP/management as wrong, justifying the maintainability of the reference, as the workwoman/ Union had raised it more earlier than her retirement, so her dependant is entitled to get an employment.Moreover,the workwoman had opted for her resignation under the V.R.S(F) prior to her age of 58 years.

4. Whereas in challenge to it, the contra case of the OP/Management with categorical denials is that workwoman Smt.Rajmatia Cherin,the employee of Loyabad Colliery, retired from her service at her age 60 years on 01.07.1994.No provision either in the NCWA or in the Certified Standing Order of the Company provides any employment to the dependant of a retired employee. Smt. Rajmatia Cherin had submitted her application under V.R.S. (F) as well as for employment of her dependent son-in-law petitioner Lakhan Chero.But as at the time of approval of her V.RS. (F) Application, she was more than 58 years, her application was not accepted by the Management according to the said scheme. The Management had communicated their all decisions to her. After her superannuation, the Union raised the industrial dispute as a belated and stale one while she was not working.

In the rejoinder, the OP/Management has categorically denied all the allegations as incorrect or irrelevant, further stating that the application of the workwoman for Voluntary Retirement was considered, but it was not competent according to the V.R.S(F).So it was not accepted. Therefore, the petitioner has no right to get an employment in M/s BCCL which is not an Industrial dispute. Moreover, Smt.Rajmatia Cherin has not suffered any loss for non-acceptance of her VRS application.

FINDING WITH REASONS

5. In the instant case, WWI Sri Kumar Dusad,the Welder,and WW2 Rajmatia Cherin on behalf of the Union concerned have been examined, but not a single witness in behalf of the OP/Management despite more than ample opportunity for it could be examined.

On going though the materials on the case record, I find that WW2 Rajmatia Cherin,Ex-Crusher Mazdoor appeared to have offered to retire voluntarily from the service of the Company on the condition that her son-in-law Lakhan Chero would be given an employment in her place by submitting all the papers (Ext.W.1 series) for employment of her son-in-law. In fact, the Management appears to have admitted in their letter dt.21..8.1993 of the Project Officer, Loyabad Colliery, which was submitted to the A.LC.(C),Dhanbad (Ext.W.3) in the I.D. that though petitioner Lakhan Chero was referred to Area Medical Board for medical Examination, and was also fund medically fit for employment, following the approval for his appointment under the VRS(F) as per the H.Qr. Letter N.BCCL/PA/II/VRS(F)/Ar.V/92/4148-49 dt.24.04.1992,yet the petitioner was not given an employment under the Scheme merely on the ground :

" by the time the medical examination report was available for offering an employment to Shri Lakhan Chero,Smt.Rajmatia Cherin (workwoman) crossed the age of 58 years which necessitated the fresh approval of Head Quarter's and as per direction of the Company communicated under Letter No..BCCL/PA-II/VRS/(F)/93/ 364-424(H) dt. 2.3.1993,the female workwomen who were not stopped from duty are not to be allowed to retire under V.R.S.(F).As such workwoman was not stopped from duty in pursuance of above offer order, Shri Lakhan Chero has not been offered an employment."

Laying emphasis on the aforesaid points, M.D.K.Verma, Learned Counsel for the OP/Management has to argue that Smt.Rajmatia Cherin (WW2) has silently admitted the non acceptance of her resignation under the VRS (F) due to crossing her statutory age of the V.R.S (F), so the claim of the petitioner for employment is legally unjustified.

6. In the instant case, the acknowledged facts are that Smt.Rajmatia Cherin, Ex-Crusher Mazdoor, had duly applied on 3.12.1991(Ext.W 1/1) under the V.R.S.(F) at her due age 57 years for the employment of her dependant son-in-law petitioner Lakhan Chero in her place after her resignation

as evident from the very letter dt.20.1.1992 of the Vice Personnel Manager,Loyabad Colliery to the Vice Chief Personnel Manager, Sijua Area (Ext.W.1), the approval for appointment of petitioner Lakhan Chero as her dependant son-in-law as communicated to her through the Management's letter dt.24.4.1992 and the Medically fitness of the petitioner son-in-law found by the Medical Board. Even then the petitioner Lakhan Chero was denied his employment in place of her mother-in-law, Ex-Crusher Rajmatia Cherin,though she appears to have resigned her service for it at the relevant time while she was 57 years old. So the plea of the Management in lack of any proof that the workman had crossed her age of 58 years by the time the Medical Examination appears to be nothing but an arbitrary and malafide design to deprive of an employment of her dependant son-in-law petitioner, as the OP/Management appears to have intentionally adopted a prolong processing of the workwoman's application.Besides, the OP/Management could not establish the retirement of the workwoman Rajmatia Chrine from service. The OP/Management in these circumstance can not retract from their legal obligation under the said VRS(F) to provide her dependant son-in-law petitioner an employment.

7. Considering the aforesaid facts and circumstances, it is, in the terms of the reference, hereby responded and awarded that the action of the Management of Loyabad Colliery of M/s BCCL in not providing an employment to the dependant son-in-law Lakhan Chero of Smt.Rajmatia Cherin,Ex-Crusher Mazdoor is neither legal nor justified.Hence,petitioner Lakhan Chero,depdendant son-in-law of Smt.Rajmatia Cherin is entitled to his employment under the VRS(F) concerned, as her resignation was accepted and the approval for his appointment was made by the OP/Management at due time.

KISHORI RAM, Presiding Officer

नई दिल्ली, 5 जनवरी, 2015

का.आ. 93.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 04/2005) को प्रकाशित करती है जो केन्द्रीय सरकार को 05-01-2015 को प्राप्त हुआ था।

[सं. एल-20012/146/2004-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 5th January, 2015

S.O. 93.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 04/2005) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 05.01.2015.

[No. L-20012/146/2004-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act,1947.

REFERENCE NO. 04 OF 2005

PARTIES : The General Secretary,
Jharkhand Colliery Shramik Union,
At New Colony, Muraidih,
PO : Nawagarh, Dhanbad

Vs.

Chief General Manager,
Katras Area of M/s BCCL, PO : Sijua,
Distt. : Dhanbad.

Ministry's Order No. L-20012/146/2004-IR (C-I) dt.15.12.2004

APPEARANCES :

On behalf of the workman/Union : Mr. S.N.Goswami, Ld.Adv.

On behalf of the Management : Mr. D.K.Verma, Ld. Adv.

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 12th Nov., 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10 (1) (d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No L-20012/146/2004-IR(C-I) dt.15.12.2004

SCHEDULE

"Whether the demand of Jharkhand Colliery Shramik Union from the Management of Ramkanali Colliery of M/s BCCL for regularizing Sri Lakhan Pd.Mahato in clerical Grade is justified? If so, to what relief is the concerned workman entitled and from what date?"

On receipt of the Order No. L-20012/146/2004-IR (C-I) dt.15.12.2004 of the above mentioned reference from

the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No.04 of 2005 was registered on 13.01.2005 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own respective Ld.Counsels appeared in, and contested the case.

2. The case of workman Lakhan Pd. Mahato as stated in his written statement under his signature only, but not under that of the General Secretary, Jharkhand Colliery Sharamik Union, Muraidih, Dhanbad,is that he is a permanent employee of Ramkanali Colliery, Katras Area No.IV of M/s. BCCL working as the Clerk. He was initially appointed as the General Mazdoor on 05.07.1994.He has been performing his duty as Auto Electric Helper, though no technical training provided by the Management, and thereafter as Assistant in vacant sanctioned post of the clerk in clerical Grade in different in sections including Dispensary of the colliery as per the office order dt. 05/06.08.2002 as forwarded to other Authorities such as the Manager and others concerned. Since then, he has put more than 240 days attendances as the clerk, of which his existing capacity of the jobs has been confirmed and appreciated by the Management as per the Office Order dt.23.09.2002.The Management has virtually admitted the performing jobs of the workman as the clerk Grade III on vacant and sanctioned post of clerk by establishing his relationship with the Management under Section 25 B of the I.D.Act, 1947.He has passed the Matriculation Examination. The job of the clerk is permanent and perennial nature, as he has been doing the jobs as assigned as the clerk on permanent basis.Thereafore, the workman is legally entitled for regularsation in the clerical Grade III under the clause 7.2. of the Certified Standing Orders of M/s. BCCL applicable to its employees. Since the workman had been working as the clerk, the Management transferred the workman from the assigned clerical job to work as the Auto Elec. Helper in Transport Section as per the Office Order dt.07/09.06.2003 of the Project Officer ,instructing him to report for duty to the SE (& M),Ramkanali Colliery. The Project Officer is not the Competent Authority nor to deploy any PR/TR to work as Monthly Rated. The jobs of the Auto Elec. Helper and the Clerk are Monthly Rated. The matter has been considered at the C.CC. Meeting on 16.7.2003.The workman had represented to the Management to recall the aforesaid office order as invalid, and he has been performing clerical jobs as the clerk. The demand of the sponsoring Union for regularization of the workman in clerical Cadre is legal and justified. Likewise is the rejoinder of the workman under his own signature wherein he appears to have specifically denied all the allegations of the OP/Management as vague false and misleading.

3. Whereas with categorical denials, the contra pleaded case of the OP/Management is that the instant reference is unmaintainable in facts and law, as the Union has no locus standi to raise it. No provision provides for regularization of a General Mazdoor in clerical grade. The Clerk Grade III as per the Cadre Scheme of Clerical Grade is a selection post, which is filled ,if any vacancy, through Departmental Selection Committee, (hereinafter referred to as D.P.C.) duly constituted by the Competent Authority according to manpower budget. After giving equal opportunity to all eligible candidates in the Trade Test conducted by it, the D.P.C. selects successful candidates, and recommends for selection for the post of the Clerk Grade III subject to vacancy. The workman was appointed as the General Mazdoor on 15.7.1994 at Ramkanali Colliery, and he was promoted as Sr. E.P. Trainee, and then as the Auto Electric Helper. The workman was working in the Excavation Department. He was transferred from Ramkanali Colliery to Ramkanali Dispensary for a temporary period. The Project Officer had issued an Office Order without any authority, and directed the workman to work as a clerk. The matter as soon as came to the knowledge of the Management, the management again transferred the workman back to the colliery where he is working as the Auto Electric Helper in Transport Section of Ramkanali Colliery. The demand of the Union for regularization of the workman as a clerk through backdoor is neither legal nor justified.)

The OP/Management in their rejoinder has specifically denied the allegations of the workman as incorrect and misleading, further alleging that the Office Order of the Project Officer was subsequently cancelled, and the workman was deployed to work according to his designation.

FINDING WTH REASONS

4. In the instant case, WW-I Lakhan Prasad Mahato, the workman himself on behalf of the Union concerned only has been examined, but no witness on behalf of the OP/Management could be examined despite ample opportunity for it.

Keeping in view the materials as proved by the workman (Ext.WWI) Mr.S.N.Goswami, Ld. Advocate for the workman as per his written argument has submitted that admittedly the workman has been performing the duty as a clerk since 1994 as the job assigned by the Management against the vacant and sanctioned post which is permanent; that the workman has continuously rendered his service in Clerical Gr.II by putting his

attendances more than 240 days in each calendar year and his existing capacity till now was also confirmed by the Management, the workman is entitled to his regularization in the Clerk Grade III in the year 1992-97 and G.II in 1997-2000 and Gr.I in 2003; and as such the demand of the Union concerned for regularization of the workman is justified. But the particular facts of the years for his regularization of the workman appear to be unpleaded.

On the other hand, the contention of Mr. D.K.Verma, Ld.Advocate for the OP/Management in the terms of reference is that the workman was admittedly engaged as General Mazdoor/Time Rated worker, then he was promoted as the then as the Auto Elec.Helper Sr. E.P. Trainee who is not a daily Rated worker. But, the Clerical workers are Monthly Rated Workers; and the post of Clerical Gr. is of the Cadre which is filled up through the Selection Committee, namely, the Departmental Promotion Committee. It is also contended the workman was working as the Assistant in clerical job at Ramkanali Colliery. Dispensary as per the Office Order dt. 23/25.09.2002 of the Project Officer concerned. But admittedly he was not selected for working as a clerk in Clerk Gr. through the DPC, as there is no provision for it directly. It is also beyond any dispute that at present the designation of the workman is the Auto Electrician Helper Gr.II and accordingly he was transferred to Auto workshop as he had refused his promotion to the post of Auto Electrician Cat.II, so his promotion was withdrawn as per the office letter dt.30.12.2009 (Ext.W.5); under these circumstances, the claim of the workman or of the Union concerned for the promotion in clerk Gr. is baseless and unjustified.

5. On perusal of the materials as adduced on behalf of the Union/workman on the case record, I find the workman, the Matriculate (Ext.W.1) was appointed as the General Mazdoor Cat.I under Land Looser Scheme. He had also the certificate of Computer Training (Ext.W.2) under the Computer Literacy Drive vide letter dt. 7.3.2010 of the Area Manager (Transport-Katras Area).Earlier he was transferred to the aforesaid Colliery Dispensary (Ext.W.3) as the Auto Elec.Helper as per the letter 5/6.08.2012 (Ext.W.4), and accordingly from RamKanali Dispensary to Ramkanali OCP as per the letter dt.26/29.03.2003 (Ext.W.4/2). During that period, the workman was authorized to work as the Asstt. In Clerical job at aforesaid colliery/Dispensary as per the order dt.23/25.03.2002 of the Project Officer of the Colliery (Ext.W.4/1) which appears to be quite illegal, as the Project Officer is not the competent Authority to authorize any such workman to work as an Assistant in clerical Grade, because the post of the clerk has its own Cadre.

In result, it is herby, in the terms of the reference, responded and accordingly awarded that the demand of the Jharkhand Colliery Shramik Union from the Management of Ramkanali Colliery of M/s. BCCL for regularization of the workman Lakhan Pd. Mahato in Clerical Grade is not only illegal and but also unjustified on account of the category different from the category of the workman.Hence,the workman is not entitled to any relief from any date.

KISHORI RAM, Presiding Officer

नई दिल्ली, 5 जनवरी, 2014

का.आ. 94.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 76/1998) को प्रकाशित करती है जो केन्द्रीय सरकार को 05-01-2015 को प्राप्त हुआ था।

[सं. एल-20012/105/1997-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 5th January, 2015

S.O. 94.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 76/1998) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 05.01.2015.

[No. L-20012/105/1997-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act,1947

REFERENCE NO. 76 OF 1998

PARTIES : The Secretary,
Dhanbad Colliery Karmchari Sangh,
Dhanbad

Vs.

General Manager,
Pootki Balihari Area of M/s. BCCL,
PO : Kusunda, Dhanbad

Ministry's Order No L-20012/105/97-IR(C-I) dt. 12/17.3.1998

APPEARANCES :

On behalf of the workman/Union : Mr. U.P. Sinha, Ld. Advocate

On behalf of the Management : Mr. D.K.Verma, Ld. Advocate

State : Jharkhand Industry : Coal

Dated, Dhanbad, the 24th Nov., 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10 (1) (d) of the I.D. Act., 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/105/97-IR(C-I) dt. 12/17.3.1998

SCHEDULE

"Whether the denial of regularization of the services of Shri Govind Prasad Srivastava and 89 others(as per list enclosed) by the Management of Balihari Colliery,BCCL is justified? If not so, to what relief these workmen are entitled to?"

On receipt of the Order No. L-20012/105/97-IR(C-I) dt. 12/17.3.1998 of the above mentioned reference from the Government of India, Ministry of Labour & Employment, New Delhi for adjudication of the dispute, the Reference Case No.76 of 1998 was registered on 16.04.1998 and accordingly an order to that effect was passed to issue notices through the Registered Posts to the parties concerned, directing them to appear in the Court on the date fixed, and to file their written statements along with the relevant documents. In pursuance of the said order, notices by the Registered Posts were sent to the parties concerned.

Both the parties made their appearances and filed their pleadings and photocopies of their documents. The Union and the O.P./Management through their own respective Ld.Counsels appeared in, and contested the case.

2. The case of workmen Govind Pd. Srivastava & 89 others (as per lit enclosed) as sponsored by the Secretary, Dhanbad Colliery Karmachari Sangh,is that the BCCL is a Public Sector Undertaking owned by the Government of India. So it owes to the Central Government to abide by the policies, guidelines and statutes framed by the Central Government from time to time towards the workmen. In the categories of works: raising-selling of coal, coal loading & unloading, or unloading of raw coal ,over burden removal and earth cutting, soft coak manufacture,drving of store drifts and is miscellaneous store cutting of jobs underground, cleaning dust and watering of buildings, charging of magnetitic ,plant clearing including removal of spilage,wastes, muck, mangnetits in the washeries,and removal of slurry and transportation of middlngs,the employment of contract labour has been prohibited as per the provisions of the Contract Labour (Regularization/ Abolition) Act,1970.The process operation of the aforesaid categories of work is incidental to the coal industry..The jobs are perennial in nature and are done by regular workmen. These works are sufficient to employ considerable number of whole time permanent workmen.

3. Further case of the workmen is that the employers engaged these workmen in the jobs of tyndels, underground supporting, cutting, drifting and loading of coal, packing and fitting of lines and underground screaming - all under prohibited categories as under the said Act. The workmen concerned have been regularly and continuously working with the necessary tools supplied by the employers directly under the supervision and control of the Management since 1990, having put more than their attendances for 190 and 240 days underground and asurface respectively. The Management had introduced a contract system in the garb of a Co-operative system named Kaylaanchal Shramik Sahayog Samittee under which the workmen are alleged to be working in various jobs of the prohibited categories on contract basis. The alleged contract with the Co-operative Society is a camouflage to exploit and deprive the workmen of their legal dues of the wages under Cat.IV, V, VI , Group V and VA of the NCWA with consequential benefits. The workmen are not paid their legal dues despite the membership of CMPF. Since the contract awarded to the Co-operative for prohibited categories of work is illegal, the workmen are deemed to have been working directly under the employers; hence, they are entitled to regularization in their jobs as they have acquired the status of permanent workmen as per the Certified Standing Order of the Company. Even their representation through the Union did not bear any result, an Industrial Dispute was raised by the Union before the ALC©, Dhanbad, but the same due to failure of conciliation resulted in the reference for an adjudication.

The Union concerned in the rejoinder for the workman has specifically denied the allegations of the OP/Management as baseless, further stating that the alleged formation of the Co-operative Society never conferred any right on the employer to violate the mandatory provisions of the Central Labour (R & A) Act.

4. On the other hand, challenging the maintainability of the I.D. in law, the case of the O.P./Management with categorical denials is that consequent upon the incorporation of Sec.13A in the Bihar Co-operative Societies Act 1935 by the Amendment Act No.5 of 1989, the Distract Authorities of the State Government encouraged the formation of Co-operative Societies for various purposes in the Coalfield Area of Dhanbad District. In that regard, one Co-operative Society named Koyla Anchal Shramik Sahayog Samitee was formed and registered in the year 1990 under the provision of the aforesaid Act,1935.The Co-operative Society after its formation and registration became the body Corporate under the provision of Sec.13 of the aforesaid Act with perpetual succession and a common seal with power to acquire and hold property to enter into a contract and to do all the other things in the capacity of body Corporate.The Managing Committee was formed for the

running the aforesaid Co-operative Society, and the President, the Secretary and other members of the Committee took all the steps as per the provisions of law. Negotiation with various managemens of the colliery establishments and other ones running industries in the Coalfield area and securing contracts on various jobs for gainful employment of its members through such contracts were the aims and objects of the aforesaid Society. The M/s. BCCL as per the provisions of Sec.13 A of the Bihar Co-operative Societies Act, 1935 took initiatives for awarding various contracts to different Co-operative Samittee for miscellaneous works at different colliery establishments. Likewise, the aforesaid Co-operative Society was awarded the contract by the Management of Balihari Colliery for miscellaneous jobs on the surface and the underground. But the contract works were never continuous, rather intermittently. The aforesaid Co-operative could engage few persons on such jobs.

The Co-operative Society of hardly 25 members was a contractor as represented by Sri Gobind Pd Srivastavaas as the Secretary thereof. The Government Authorities in course of inspections had also found that they were being paid less wages than fixed under NCWA-IV in the year 1994 as demanded for payment of their wages thereafter as per the letter dt.22.2.1994 to the Agent and the Secretary of the Society. The complaint of the Central Government Labour Department manifested only few persons Govind Pd.Srivastava, Ramakand Srivastava, Kashinath Lal,Ram Raksha Mahato and Mahangu Mahato others as genuine members of the Co-operative Society who out of 90 persons as the list enclosed had worked on the contract jobs of Balihari Colliery. But the Co-operative Society has malafide included the rest strangers in the list in search of their employment through litigation.

5. Further it is alleged that on enforcement of the Contract Labour (R &A) Act, 1970,and incorporation of Sec.13 A in the Bihar Co-operative SocietyAct,1935,the members of Co-operative Societies could themselves secure their employment by taking a contract in the name of the societies so as to earn their wages and dividends from the profits made by the Co-operative Society. As such the members of the Co-operative Society who worked on the basis of the contract awarded to their society can not demand for their regularization by the Management of the Principal Employer. The Tribunal has no jurisdiction to entertain such claim and to abolish the contract system. The Central Government, the appropriate Authority, has accordingly issued u/s 10 of the said Act the notification in 1988 prohibiting the engagement of contract labour on some of the jobs available in coal mine .But the aforesaid society was never awarded any contract on any job of the prohibited categories. The case of the alleged workmen for regularization is meritless. The persons concerned are not entitled to any relief.

The OP/Management in their simultaneous rejoinder has categorically denied all the allegations of the persons concerned as totally incorrect and baseless.

FINDINGS WITH REASONS

6. In the instant reference,WWI Gobind Pd Srivastava for all workmen on behalf of the Union concerned, and MWI Sunil Kr Roy, the Sr.Surveyor from the OP/ Management respectively.

On perusal of the pleadings and evidences/materials of both the parties, the facts appear to be evidently beyond dispute that Sri Govind Prasad Srivastava (WWI), one of the workmen, was the Secretary of the Co-operative Society: Koyalanchal Shramik Sahyog Samittee formed by them as per its Bye laws (ExtW.1) and its Registration Certificate(ExtW.3). Admittedly on the basis of the work orders (Extt.W.4 series)issued by the Management to their Co-operative Society, they used to work as per the work order for miscellaneous jobs .Their bills (Extt.W.5 series) were submitted by the Co-operative Society as a contactor to the Management. Aforesaid witness (WWI) as the contractor on behalf of the Society used to sign all these bills. It cannot be denied that the Management used to release payment in the name of the aforesaid Society following its sanction. As such in the fact of both the parties at variance with other facts, the following issues evolve and need to be determined for proper adjudication:

(i) Whether there was employer-employee relationship between the workmen and the OP/Management.

(ii) Whether the alleged workers have continuously worked for 190 and 240 days underground and on the surface of the Balihari Colliery at relevant time.

7. Over the first issue of the employer-employee relationship, Mr. U.P. Sinha, Learned Counsel for the Union/workmen in view of the pleaded evidences, oral and documentary available on the case record has submitted that all these workmen are the members of the Koyla Anchal Shramik Sahyog Samitee,a Regd. Co-operative Society (Extt.W.1 to 3), they were continuously engaged to work on the jobs:cleaming of dust, slurry, etc. as noted in the work orders (Exty.W.4 Series) with the tools supplied by the Management under the direct supervision of the manager of Balihari Colliery, though all the jobs were admittedly of perennial in nature, though the prohibited category under Sec.10 of the CLRA Act,1970. Mr.Sinha has emphatically submitted that admittedly they were being paid for their work lesser than their due wages as per the letter dt 22.2.1994 of the Government Authority to the Agent of the Colliery as well as to the Secretary of the Society, but when they raised an issue for correct payment and regularisation,they were stopped from working since the year 2002. According to Mr. Sinha, the failure to produce the aforesaid letter, the Attendance Register in Form- C or any copy of license

given to the Co-operative Society, or a report to the Licensing Authority about the status of the Co-operative Society as a contractor for it as required under Sec.12 of the said Act implies nothing but the camouflage and paper arrangement to show the workman as contractor workers; the absence or non-production of such Registration Certificate u/s 7 and the license of the contractor for Contract Labour u/s 12 of the CL (RA) Act 1970 and its Rules disproves the alleged existence of the aforesaid Co-operative Society as a contractor, rather it establishes negatively that these workmen are not the employees of the contractor, but they are the employees of the Management of the Ballihari Colliery of M/s BCCL, as there is direction relationship of Employer and Employee between the OP/Management and the workmen as also held by the Hon'ble Apex Court in the similar case of B.D.V.S. Sangh Vs. V.K. Sharma (2011(131)FLR 759 SC (DB), and lastly 2014(141)FLR 1101(Cal H.C.)(SB), Ashish Dey Choudhary & Ors. Vs. State of West Bengal wherein the Hon'ble High Court has been pleased to hold that in the matter of contract labour, if the contract is not genuine, Industrial Tribunal would have jurisdiction to decide the issue whether a contract between the principal Employer and the contractor is genuine or camouflage (Para 17).

Whereas in response to it, Mr D.K.Verma, Ld.Counsel for the OP/Management has contended that as per the photo copy of Registration of the Koyalanchal Shramik Sahyog Samitee with the copy of its bye laws and that of their membership of it (Ext.t.W.3,1 &2 respectively) and even the very list of the workmen manifests that they are the workmen employees of the Regisrated Co-operative Society, not of the Management. It also stands corroborated by the work orders and their bills (Extt.W.4 and 5 series respectively). Mr.Verma has pleaded that all these admissions of the workmen are enough to show negatively that they were not employees of the OP/ Management, and it is settled law that contractor's workers are not the employees of the OP/Management as there was no relationship of employer-employee between the OP/Management and the alleged workmen.

In the light of the arguments of both Learned Counsels for the respective parties, I find that in the face of the admitted facts about the status of the workmen as well as the members of their Registered Co-operative Society, they virtually worked as contractor as well as members of their aforesaid Regd. Co-operative not only for their wages but also for their dividend earned by their co-operative as a contractor for miscellaneous works done on the basis of the work orders issued to their Co-operative Society. The works as per the work orders clearly appear to be unperrenial only, such situation does not call for proof for the license of the Contract etc. for contract work. Nor any question about the genuinity of the contract arises. At the point, the Hon'ble Supreme Court was pleased to hold that…

"contract Labour engaged by the contractor does not create relationship of Master and servant between the Contract Labour and Principal employer as held in the case of Steel Authority of India Ltd., V.N.U. Water Front Workers reported in 2001 LAB. I.C.3656 SC (C.B) (Paras 101,114,117)". In these circumstances, none of the rulings cited by Mr. U.P. Sinha, Ld. Adv. for the Union/workmen appears to be applicable to the case as it stands.

8. As to the second point over the continuous working of the workmen as contractor Labour,the oral statement of Sri Govind Pd.Srivastava,as the then Secretary of the Registered Cooperatives discloses the fact that the workmen have been working since 1990.But their contractors' 16 bills for the irregular period from 24.07.93 to 31.08.95 impliedly indicate/concern with their intermittently casual workings underground and on surface as well. There is no proof of the continuous working for requisite period during any twelve calendar months preceding to the date with reference as required under Sec. 25 B (2)(a)(i) or (ii) of the I.D.Act,1947. In result, it is held that the workmen have not continuously worked for 190 or 240 days underground and on the surface of the Balihari Colliery .

Hence, it is, hereby responded and accordingly awarded that the denial of regularization of the services of Sri Govind Prasad Srivastava & 89 others (as per list enclosed) by the Management of Balihari Colliery of M/s BCCL is quite justified. Hence, these workmen are not entitled to any relief.

KISHORI RAM, Presiding Officer

LIST OF THE WORKMEN

1. Govind Pd.Srivastava
2. Anil Kr. Srivastava
3. Ramakant Srivastava
4. Upendra Kumar
5. Kashinath Saw
6. Ramesh Kumar Sinha
7. Ramrastha Mahato
8. Rameshwar Mahato
9. Mahango Mahato
10. Suresh Mahato
11. Sri Bhagwan Singh
12. Jitendra Kumar Pd.
13. Uday Yadav
14. Rajdev Yadav
15. Ramkrishna Yadav
16. Md.Kallimuddim
17. Upendra Kumar

18. Sushil Mahato
19. Naresh Yadav
20. Ajay Yadav
21. Bripastav Pd. Kamal
22. Ram Kumar Yadav
23. Surendra Kumar
24. Uday Singh
25. Ranvijay Singh
26. Nagendra Kumar
27. Sanjay Kumar
28. Ramdhyan Yadav
29. Ramvijay Yadav
30. Surendra Yadav
31. Diyanand Yadav
32. Vijay Yadav
33. Sri Prasad
34. Awadesh Prasad
35. Naresh Yadav
36. Mahendra Mehta
37. Ramchandra Yadav
38. Brahmdeo Yadav
39. Mohan Prasad
40. Shivnarayan Singh
41. Om Prakash
42. Birendra Giri
43. Ashok Kumar
44. Shivbachan Ram
45. Munna Yadav
46. Ajit Kumar Singh
47. Surendra Chauan
48. Radhya Shyam Chauan
49. Upendra Kumar Singh
50. Jitendra Paswan
51. Laljee Chauan
52. Ramchabila Harijan
53. Pradumen Chauan
54. Chotta Lal Ram
55. Bishundhari Ram
56. Rajesh Kumar
57. Ramnaresh Yadav
58. Md. Bashar Kha
59. Sudershan Sandhu
60. Nagendra Kumar Ram
61. Anil Kumar Gupta
62. Satendra Prasad
63. Ram Prasad Mahto
64. Ram Uday Singh
65. Trivwan Kumar
66. Rabindra Kumar Singh
67. Ashok Kumar Malakar
68. Rajkumar Prasad
69. Ramsewak Paswan
70. Promod Kumar Sinha
71. Manoj Kumar Singh
72. Mahendra Prasad
73. Satendra Yadav
74. Aahhsar Ahmad
75. Janarden Prasad
76. Ramdinesh Prasad
77. Kameshwar Pd. Singh
78. Ramprakash Harijan
79. Prabhakar Yadav
80. Ramashraya Yadav
81. Ramashraya Yadav
82. Ram Ratan Yadav
83. Mithlesh Kumar Mehta
84. Arpit Singh
85. Jayant Kumar Singh
86. Ambuj Prasad
87. Vijay Kumar Verma
88. Nand Kumar Singh
89. Daya Rout
90. Shashi Pd. Sinha

नई दिल्ली, 5 जनवरी, 2015

का.आ. 95.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 110/2013) को प्रकाशित करती है जो केन्द्रीय सरकार को 05-01-2015 को प्राप्त हुआ था।

[सं. एल-20012/14/2013-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 5th January, 2015

S.O. 95.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 110/2013) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their

workmen, received by the Central Government on 05.01.2015.

[No. L-20012/14/2013-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT : Shri Kishori Ram, Presiding Officer

In the matter of an Industrial Dispute under Section 10(1)(d) of the I.D. Act,1947

REFERENCE NO. 110 OF 2013

PARTIES : The Jt.General Secretary,
Rastriya Colliery Mazdoor Congress
PO : Nudkhurkee Distt: Dhanbad

Vs.

General Manager,
W.J. Area Moonidih of M/s. BCCL
PO : Moonidih, Dhanbad

Ministry's Order No L-20012/14/2013-IR(C-I) dt. 09.04.2013

APPEARANCES :

On behalf of the workman/Union : None

On behalf of the Management : Mr. D.K.Verma, Ld. Advocate

State : Jharkhand Industry : Coal

Dhanbad, the 10th Nov., 2014

AWARD

The Government of India, Ministry of Labour, in exercise of the powers conferred on them under Sec.10 (1) (d) of the I.D. Act, 1947 has referred the following dispute to this Tribunal for adjudication vide their Order No. L-20012/14/2013-IR (C-I) dt. 09.04.2013.

SCHEDULE

"Whether the action of the Management of W.J.A.Moonidih of M/s. BCCL in dismissing Sri Sanichar Bhuia from the services of the Company vide order letter dated 10.03.2000 is legal and justified? To what relief the concerned workman is entitled to?"

2. Neither the Union Representative of RCMC nor workman Sanichar Bhuia appeared and nor any written statement with the documents filed on behalf of the workman despite several opprtunities. Mr. D.K. Verma, Ld. Advocate for the OP/Management is present.

On going through the case record, I find the case has been all along been pending since 22.7.2013 for filing written statement with the documents on behalf for the workman. The case is related to the dismissal of the workman. Three Regd. Notices dt. 20.5.2013, 26.02.2014 and 06.06.2014 through Registered posts were sent to the Union Representative on his address noted in the Reference itself for it, but the Union Representative for the workman or the workman himself did not respond to any of the notices, the Union Representative and the workman by their such conducts appear to be quite uninterested in pursuing the case. Under these circumstances, the instant reference appears to be no longer Industrial Dispute.Hence, the case is closed, and accordingly an 'Award of No Dispute' is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 5 जनवरी, 2015

का.आ. 96.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एयर इंडिया लिमिटेड के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, मुंबई के पंचाट (संदर्भ संख्या 64/2001) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05-01-2015 को प्राप्त हुआ था।

[सं. एल-11012/13/2001-आईआर (सी-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 5th January, 2015

S.O. 96.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 64/2001) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Mumbai as shown in the Annexure, in the industrial dispute between the management of M/s. Air India Ltd. and their workmen, received by the Central Government on 05.01.2015.

[No. L-11012/13/2001-IR (C-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL NO. 2, MUMBAI

PRESENT : K.B. KATAKE, Presiding Officer

REFERENCE NO. CGIT-2/64 of 2001

EMPLOYERS IN RELATION TO THE MANAGEMENT OF AIR INDIA LTD.

The Managing Director
Air India Ltd.
Old Airport
Santacruz (E)
Mumbai 400 029.

AND

THEIR WORKMEN.

Shri Suresh Kumar Yadav
C/o. Navneet M. Yadav
C-1/303, Nikash Lawns
Off sus Road
Pashan, Pune 411 021.

APPEARANCES :

FOR THE EMPLOYER : Mr. L. L. D'Souza, Representative.

FOR THE WORKMEN : Mr. Mohan Bir Singh, Advocate.

Mumbai, dated the 17th November 2014.

AWARD PART-I

The Government of India, Ministry of Labour & Employment by its Order No.L- 11012/13/2001-IR (C-I), dated 30.04.2001 in exercise of the powers conferred by clause (d) of sub-section (1) and sub-section 2 (A) of Section 10 of the Industrial Disputes Act, 1947 have referred the following industrial dispute to this Tribunal for adjudication:

"क्या एअर इंडिया के प्रबंधतंत्र द्वारा श्री सुरेश कुमार यादव, मास्टर टेक्नीशियन को दिनांक 09.01.1997 से बर्खास्त किया जाना विधिवत, न्यायोचित एवं सही है । यदि नहीं, तो कर्मकार किस राहत के पात्र हैं?"

2. After receipt of the reference, notices were issued to both the parties. Second party workman filed his statement of claimEx-8. According to the workman he was employee of the first party. He was charge-sheeted for an act of misconduct under model standing order Central 1.14 (3)(g) breach of any law for the establishment, 2.14 (3) (h) Act subversive of discipline. The substratum of the allegation was that the workman had remained absent from 13/1/1993 to 25/6/1993 without leave and that Assistant Collector of Customs (Preventive M & PV) Mumbai had reported that the workman was primarily concerned with clandestine clearance of goods (Electronic goods) valued at Rs.18,50,000 as well as Rs.26,01,000/- which were seized by custom authorities. The workman was dismissed from service and an approval application was filed before NIT-1, Mumbai. While granting approval application it is provided that the right of the workman to raise industrial dispute and get is adjudicated by competitive forum is kept intact and also all other defences are kept intact for adjudication of this Tribunal. The workman is therefore entitled to challenge the punishment awarded to him.

3. According to the workman inquiry conducted against him was against the principles of natural justice and in violation of statutory rules. The inquiry was conducted in the language not understood by the workman. The statements of witnesses were recorded behind the back of the workman. These witnesses were neither produced as witnesses nor made available for cross- examination. The findings of the inquiry committee are perverse as not supported by any reasoning and they are not rational. The Inquiry committeehas relied on the order passed by collector of customs. The said order itself is based on conjectures and surmises and not logical. Leave was granted to the workman w.e.f.15/1/193 to 26/5/1993. However as no paid leave was at his credit, the leave was sanctioned without pay. Therefore it cannot be treated as absence or misconduct as has been alleged. The inquiry was not fair and proper and findings of the Inquiry Officer are perverse. Therefore the workman prays that his dismissal be declared as illegal. He be paid damages to the tune of Rs.50 lakhs for such unfair, improper treatment and he be reinstated with full back wages. The workman is not gainfully employed anywhere.

4. The first party management resisted the statement of claim vide its written statement vide Ex-9. According to them the reference is hit by delay and laches. The workman was dismissed from service w.e.f. 9/1/1997. He has raised the present dispute in June 2000 after delay of almost three and half years. There was also approval application pending before CGIT-1, Mumbai which came to be allowed. They further contended that collector customs (Preventive) Mumbai in adjudication proceedings under the Customs Act had levied a penalty of Rs.18,00,000/- on the workman under Sec112 (a) (ii) of Customs Act 1962. While working as a Master Technician in the Civil Work and Prop. Deptt.the workman remained absent on following days: 15/1/1993 to 25/6/1993.The said period was treated as leave without pay. The Assistant Collector or Customs (Preventive M & PV) Mumbai vide his letter dt. 2/5/1995 informed the first party that the workman was primarily concerned with clandestine clearance of goods (electronic goods) valued 18,50,000/- as well as Rs.26,01,000/ which were seized by customs authority on 2/3 March 1993 as well as on 4th March 1993. Therefore the customs authority imposed penalty to the tune of Rs.18,00,000 on the workman. Therefore workman was charge sheeted under Model Standing Orders 14 (3) (g) and14 (3) (h).

5. Workman submitted his reply to the charge sheet and denied the allegations. Inquiry committee was constituted and the inquiry was conducted on 12 occasions from 26/06/1995 to 08/01/1996. The workman participated in the inquiry proceedings. He was defended by defence representative. Three witnesses were examined by management. They were offered for cross-examination. The workman also examined one witness. The copies of the documents were provided to the workman during the course of inquiry proceeding. The inquiry was conducted in Hindi with the help of interpreter as per the request of the workman. He was provided with the inquiry proceeding in Hindi. The inquiry Committee held the workman guilty. They submitted their report to the disciplinary authority. On the basis of report of inquiry

committee the Disciplinary Authority issued showcause notice to the workman. He was given hearing. The Disciplinary Authority after taking into consideration the gravity of the misconduct, awarded the punishment of dismissal from service. They denied that the workman was not given fair and proper opportunity to defend himself. They denied all the allegations made in the statement of claim. They also contended that the workman was found guilty for misconduct of major nature. Therefore his services were rightly terminated by the Disciplinary Authority. The workman is not entitled to any relief. Therefore they pray that the reference be dismissed with cost.

6. Following are the preliminary issues for my determination. I record my findings thereon for the reasons to follow:-

Sr. No.	Issues	Findings
1.	Whether the reference suffers from delay and laches?	No.
2.	Whether the domestic inquiry conducted against the workman was as per the Principles of Natural Justice?	Yes.
3.	Whether the findings of the Inquiry Officer are perverse?	No.

REASONS

Issue No. 1 :

7. In the case at hand fact is not disputed that the workman was terminated from services w.e.f. 11/11/1996 and he has raised the industrial dispute four- five years thereafter in the year 2000-2001. Therefore it was submitted on behalf of the first party that the reference suffers from delay and laches. In this respect Ld. Adv. for the second party submitted that the provisions of Limitation Act are not applicable to the Industrial Disputes Act. Therefore question of limitation does not arise and the claim cannot be rejected on the ground of delay and laches. In support of his argument, Ld. Adv. for the second party resorted to Apex Court ruling in Ajaib Singh V/s. Srihind Co-op Marketing-cum-processing Service Society Ltd. &Anr. 1999 I CLR 1068 wherein on the point of delay the Hon'ble Court observed that;

> "The provisions of Article 137 of the Schedule to the limitation Act 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay."

The Hon'ble Court in para 10 of the judgement further observed that;

> "No reference to the labour court can generally be questioned on the ground of delay alone. Even in a case where the delay is shown to be existing, the Tribunal, Labour Court or the Board delaying with the case can appropriately mold the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination/ or dismissal."

8. The Ld. Adv. also relied Andhra Pradesh High Court ruling on the same ratio. In the light of ratio laid down by the Apex Court I come to the conclusion that the reference is neither hit by delay and laches nor can be said time barred. Accordingly I decide this issue No.1 in the negative.

Issue No. 2 :

9. In respect of the inquiry proceeding, the Ld. Adv. for the second party contended that wrong standing order was quoted while framing the charge against the workman. It is further submitted that inspite of request of the workman to record the proceeding in Hindi, the Inquiry Officer recorded it in English. Therefore it was submitted on behalf of the workman that the Inquiry Committee violated the principles of natural justice. In this respect the Ld. Adv. for the first party submitted that clear charges were properly explained to the workman and he had also filed his written reply thereto. The workman has admitted the same in his cross Ex-15 page 8 thereof. Therefore question of framing wrong or defective charge does not arise.

10. In respect of proceeding written in English, the Ld. Adv. for the first party pointed out that copy of Hindi translation was supplied to the workman. He has admitted the same in his cross examination at Ex-15. It is further submitted by the Ld. Adv. for the first party that the inquiry was conducted in Hindi. Proceeding thereof was recorded in English and copy of Hindi translation was also given to the workman. In the circumstances there was no violation of Principles of Natural Justice. In support of his argument Ld. Adv. cited Kerala High Court ruling in Chief Security Commissioner, Southern Railway, Madras &ors. V/s. V.K. Shridharan 1998 Lab. I.C. 1753.In that case the IO was not knowing Malayalam. The inquiry was held in English. A graduate officer translated the depositions etc. to and from English. In the circumstances, the Hon'ble Court held that Principle of Natural Justice not violated. In this respect I would like to point out that understanding the proceeding by the delinquent employee is essential. In this respect Bombay High Court ruling also can be resorted to in National Organic Chemicals Ltd. &Ors. V/s. Pandit Ladaku Patil 2008 III CLR 716 wherein the inquiry was conducted in Marathi and the evidence was recorded in English. The Hon'ble Court held that, the inquiry cannot be quashed merely for recording evidence in English.

11. The Ld. Adv. for the first party submitted that the inquiry officer has followed the proper procedure as contemplated by law. He further submitted that the Hon'ble

Apex Court in respect of fair and proper inquiry resorted to Apex Court ruling in Sur Enamel and Stamping Works Ltd. V/s. Workmen AIR 1963 SC 1914 wherein Hon'ble Apex Court has laid down the points to be complied with in the inquiry proceeding. In para 4 of the judgement the Hon'ble Court observed that;

"An inquiry cannot be said to have been properly held unless;

(1) The employee proceeded against has been informed clearly of the charges leveled against him.

(2) The witnesses are examined-ordinarily in the presence of the employee in respect of the charges.

(3) The employee is given a fair opportunity to cross-examine witnesses.

(4) He is given a fair opportunity to examine witnesses including himself in his defence if he so wishes on any relevant matter, and

(5) The inquiry officer records his findings with reasons for the same in his report.

12. In the case at hand the Ld. Adv. for the first party submitted that the charges were informed and framed in clear words against the workman. The witnesses were examined in presence of the workman. He was given fair opportunity to cross-examine them. The workman was also given fair opportunity to examine witnesses including himself in his defence. The workman has admitted all these facts in his cross-examination at Ex-15. The Inquiry Officer has recorded findings with reasons for the same in his report. In this back drop I come to the conclusion that the Inquiry Officer has followed the norms set out by the Hon'ble Apex Court in the above referred ruling. Thus in the light of the guidelines given by Hon'ble Apex Court, the inquiry is found to be fair and proper. Accordingly I decide this issue No.2 in the affirmative that the inquiry is fair and proper.

Issue No. 3 :

13. In respect of the findings on the charges of alleged absenteeism and involvement in the activities of smuggling, the Ld. Adv. categorically pointed out that though the workman was charged for absenteeism, infact in the record it was shown that the workman was on leave without pay. The Ld. Adv. submitted that leave without pay means leave was sanctioned. However as there was no leave at the credit of the workman, it was leave without pay. In the circumstances, it was submitted that the charge of absenteeism was not proved. In this respect from the record it is revealed that the workman was on privileged leave up to 13/1/1993. Thereafter he was absent for more than six months till 25/6/1993. It is revealed that as the workman was absent, his absence is treated as without pay and the word was loosely used by the concerned office bearer as 'leave without pay'. Infact it was period of absence of the workman. Neither there is any record to show that workman had applied for the leave nor there is any order passed by the concerned authority to the effect that he was granted leave without pay. His absence was treated as without pay. However the concerned office bearer seems to have mentioned it as leave without pay. Had it been a leave without pay, question of initiating any action for unauthorized absence would not have arose and the workman would have produced the order of sanctioning his leave. Infact there was no leave granted to the workman.In the circumstances use of word inadvertently by the concerned office bearer in the register as leave without pay does not extend any help to the workman as infact he was absent and there is no record to show that any leave was granted to him. Therefore the workman cannot take advantage of the word loosely used in the attendance register as leave without pay. Therefore the finding of the Inquiry Officer cannot be called perverse.

14. In respect of the charges of smuggling of electronic goods, it is argued on behalf of the workman that it is alleged that on 2nd and 4th March, 1993 the workman was involved in smuggling activities. In this respect Ld. Adv. for the workman submitted that, workman had attended the Court at Agra on 3rd March, 1993. The workman has produced copy of roznama of the proceeding wherein it is shown that workman was present on 3rd March, 1993 at Agra Court. The Inquiry Officer has rejected this evidence by saying that it was not trustworthy record as it is maintained by a Clerk in the Court. The Ld. Adv. further pointed out that workman has also examined witness Mr. Dharam Singh who is brother-in-law of the workman. He stated before the I.O. that workman was at Agra on 3/3/1993 and he attended the Court.Though he is close relative, the Ld. Adv. submitted that under Evidence Act there is no bar to accept the evidence of close relative. According to him the I.O. erroneously rejected his evidence. He further submitted that in 1993 there was no direct flight from Mumbai to Agra and it was not possible for the workman to be in Mumbai on 02/03/1993 as he was at Agra on 03/03/1993. It was also not possible for the workman again to come back and involve in the smuggling activities on 04/03/1993. Therefore he submitted that the finding of the I.O. in respect of involvement of the workman in the smuggling activities on 2nd and 4th March, 1993 is perverse.

15. In this respect I would like to point out that reference in roznama in respect of presence of party in the Court cannot be relied upon. Even some friend or relative also can say that the party is present. No authentication can be attributed to such evidence. Many times the roznamas are written mechanically after the closing of the proceeding of the day. Therefore such evidence cannot be relied upon and the Inquiry Officer has rightly rejected the same.

16. In respect of evidence of Dharam Singh, admittedly he is brother-in-law of the workman and has every reason to save the workman. Evidence of relativeis relied upon in criminal proceedings when they are eye witnesses and their presence on the spot is natural. In such circumstances the evidence of witnesses need not be discarded merely they being relatives of the injured or victim. The said analogy is not applicable in the cases like the case in hand. Furthermore in this respect fact is not disputed even by the workman that as per the order of Collector of Customs dated 22/03/1995 and 31/03/1995, personal penalty of Rs.18,00,000/- was imposed on him for smuggling of electronic goods. The orders passed by Collector of Customs were placed on record before the Inquiry Officer. The I.O. also relied upon the evidence of Mr. P.T. Shikhare, Superintendent of Central Excise, Mumbai and the evidence of Mr. S.M. Sawant, Vigilance Officer, Air India. The Inquiry Officer found the oral and documentary evidence sufficient to hold the workman guilty for his involvement in the smuggling activities. He rightly rejected the evidence of alibi put forth by the workman. As against the evidence of workman the I.O. found the evidence of the management was quite convincing and reliable. It includes the order of Collector of Customs imposing huge penalty against the workman for his involvement in the smuggling activities. Therefore I found that findings of the Inquiry Officer are based on the cogent evidence on record. Therefore they cannot be called perverse.

17. Furthermore in the case at hand the workman has not examined himself before the Inquiry Officer. Therefore adverse inference is required to be drawn against him. On the point Ld. Adv. for the first party relied on Bombay High Court ruling in S.K. Awasti V/s. M.R. Bhoge, Presiding Officer, First Labour Court &Ors. 1994 I CLR 254 wherein the Hon'ble High Court on the point observed that;

> "The Labour Court was bound to draw an adverse inference against the petitioner for not examining himself and submitting to cross-examination."

18. Furthermore the Ld. Adv. for the first party submitted that proof in domestic inquiry is not as high as in the criminal proceeding. Therefore even a person acquitted in criminal proceeding does not get any advantage in the domestic inquiry. On the point the Ld. Adv. resorted to Division Bench ruling of Bombay High Court in Air India CorporationV/s. Richard Rashid Khan 1983 I LLJ 125 BOM HC wherein the Hon'ble Court on the point observed that;

> "The acquittal by the criminal court did not relieve the respondent of the liability which he had incurred as a result of the order of the Additional Collector of customs. He was bound to pay that penalty and that penalty was based on the finding that he was concerned in the smuggling of diamond."

19. In the case at hand the Ld. Adv. submitted that in the case at hand the Collector of Customs has imposed penalty of Rs.18 Lakhs on the workman and the Inquiry Officer relied on the said evidence along with documents and oral evidence.On the point law is also well settled in respect of findings of the Inquiry Officer i.e. when the inquiry is held fair and proper and findings of Inquiry Officer are based on evidence on record, the Tribunal is not supposed to interfere therein. The Tribunal is not sitting as an appellate authority to replace its own view in respect of the findings. On the point Apex Court ruling can be resorted to in UP State Road Transport Corporation & Ors V/s. Musais Ram &Ors. 1999 (83) FLR 226 (SC) wherein on the point Hon'ble Court observed that;

> "The Court does not sit in appeal over the findings of the I.O. If the findings are based on uncontroverted material placed before the I.O., it cannot be said that these findings are perverse."

20. In short the findings of the Inquiry Officer are based on evidence before him. They are not contrary to the evidence on record and cannot be called perverse. Thus I hold that the findings of the I.O. are not perverse. Accordingly, I decide this issue No. 2 in the negative and proceed to pass the following order:

ORDER

(i) The inquiry is held fair and proper.

(ii) Findings of the Inquiry Officer are not perverse.

(iii) The parties are directed to argue/lead evidence on the point of quantum of punishment.

Date: 17/11/2014

K. B. KATAKE, Presiding Officer

नई दिल्ली, 5 जनवरी, 2015

का.आ. 97.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार बी.सी.सी.एल. के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण/श्रम न्यायालय नं. 2, धनबाद के पंचाट (संदर्भ संख्या 5/2011) को प्रकाशित करती है, जो केन्द्रीय सरकार को 05-01-2015 को प्राप्त हुआ था।

[सं. एल-20013/2/2015-आईआर (सीएम-I)]

एम. के. सिंह, अनुभाग अधिकारी

New Delhi, the 5th January, 2015

S.O. 97.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (Ref. No. 5/2011) of the Cent. Govt. Indus. Tribunal-cum-Labour Court No. 2, Dhanbad as shown in the Annexure, in the industrial dispute between the management of M/s. BCCL and their workmen, received by the Central Government on 05.01.2015.

[No. L-20013/2/2015-IR (CM-I)]

M. K. SINGH, Section Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL (NO.2), AT DHANBAD

PRESENT : Shri Kishori Ram, Presiding Officer

In the matter of an application under Sub -section (2) of the Sec 2A of the Industrial Dispute Act, 1947 and the Industrial Disputes (amendment) Act. 2010 (24 of 2010).

I.D. CASE NO. 5 OF 2011

PARTIES : Ghosia B. P.

...Applicant

Vs.

The General Manager,
PBhowra Area of M/s BCCL,
Dhanbad ...O.P. Party

APPEARANCES :

On behalf of the workman/Union : None

On behalf of the Management : Mr. D.K.Verma, Ld. Advocate

State : Jharkhand Industry : Coal

Dhanbad, the 14th Nov., 2014

SCHEDULE

"Whether the action of the Management of Bhowra (N) U.G.Mine of M/s BCCL in dismissing he services of Sri Ghosia B.P.,M/Loader w.e.f. 07.11.2006 is justified and legal? If not, to what relief is the concerned workman entitled?"

2. Neither workman Ghosia B.P. appeared nor any Representative for the Rastriya Mazdoor Union nor any rejoinder of the workman filed. Mr. D.K.Verma, Ld.Advocate, for the OP/Management is present.

From the perusal of the case record, it appears that the case has been pending for fling a rejoinder on behalf of the wokman, for which three Registered Notices including the Union Representative were issued on 27.11.2013, 13.03.2014 and 07.08.2014 on their addresses noted in the Instant I.D.Case which is related to an issue of his dismissal. But neither the workman nor the Union Representative responded to any of the Registered Notices issued to them. Both of them by their negligent conducts appear to be not at all willing to pursue the case for its finality. In such circumstances, it appears to be no longer an Industrial Dispute; hence the case is closed as no ID.; accordingly an order of 'No Dispute' is passed.

KISHORI RAM, Presiding Officer

नई दिल्ली, 5 जनवरी, 2015

का.आ. 98.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार इंदिरा गांधी राष्ट्रीय मुक्त विश्वविद्यालय, चेन्नई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 115/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 01-01-2015 को प्राप्त हुआ था।

[सं. एल-42012/141/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 5th January, 2015

S.O. 98.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 115/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Indira Gandhi National Open University, Chennai and their workman, which was received by the Central Government on 01/01/2015.

[No. L-42012/141/2014-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Thursday, the 16th December, 2014

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 115/2014

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Indira Gandhi National Open University and their workman]

BETWEEN:

Sri V. Thennarasu : 1st Party/Petitioner

AND

The Regional Director : 2nd Party/Respondent
Indira Gandhi National
Open University
Regional Centre, G.R. Complex
IIIrd Floor, 407-408, Anna Salai
Chennai-600035

Appearance :

For the 1st Party/ Petitioner : None

For the 2nd Party/ Management : None

AWARD

The Central Government, Ministry of Labour and Employment vide its Order No. L-42012/141/2014-IR(DU) dated 17.11.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of Indira Gandhi National Open University in terminating the services of Sri V. Thennarasu w.e.f. 28.6.2013 is justified? If not, to what relief is the workman entitled to ?"

2. On receipt of the notice the petitioner has appeared in person. He has stated that he does not want to proceed with the ID 104/2014 which directly filed by him regarding the same issue is pending before this Court. This petitioner has endorsed that since the other case is pending he does not want to proceed with this case and this can be closed. Accordingly, the reference is closed.

An award is passed accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/ Petitioner : None

For the 2nd Party/ Management : None

Documents Marked:

On the Petitioner's side

Ex.No.	Date	Description
	N/A	

On the Management's side

Ex.No.	Date	Description
	N/A	

नई दिल्ली, 8 जनवरी, 2015

का.आ. 99.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार एंड्रयू यूल लिमिटेड, चेन्नई के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 108/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 07-01-2015 को प्राप्त हुआ था।

[सं. एल-42012/14/2013-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 8th January, 2015

S.O. 99.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 108/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Andrew Yule and Co. Ltd., Chennai and their workman, which was received by the Central Government on 07/01/2015.

[No. L-42012/14/2013-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Tuesday, the 23rd December, 2014

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 108/2014

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Andrew Yule & Co. Ltd. and their workman]

BETWEEN:

Sri K. Ramesh : 1st Party/Petitioner

AND

The General Manager : 2nd Party/Respondent
Andrew Yule & Co. Ltd
Electric Division
5/346, Old Mahabalipuram Road
Perungudi
Chennai-600096

Appearance :

For the 1st Party/Petitioner : Nil

For the 2nd Party/Respondent : Nil

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-42012/14/2013-IR (DU) dated 03.07.2013 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of M/s Andrew Yule and Co. Ltd. in respect of dismissal from service of Sri K. Ramesh, a workman of the Company w.e.f. 18.12.2010 is justified or not? To what relief the workman is entitled to?"

2. Notice was issued to the petitioner and he has failed to enter appearance even though he has received notice. On the second hearing date notice was sent to the petitioner again and this time also he has received notice, as seen from the postal acknowledgement card. However, the petitioner has not appeared before this Tribunal.

3. The conduct of the petitioner in not responding to the notice received by him would show that he is not interested in proceeding with the case. In the absence of any material, adjudication on merits is not possible so the reference is answered against the petitioner. An award is passed accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined :

For the 1st Party/ Petitioner : None

For the 2nd Party/ Management : None

Documents Marked:

On the Petitioner's side

Ex.No.	Date	Description
	N/A	

On the Management's side

Ex.No.	Date	Description
	N/A	

नई दिल्ली, 8 जनवरी, 2015

का.आ. 100.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत संचार निगम लिमिटेड, सहारनपुर के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, लखनऊ के पंचाट (संदर्भ संख्या 42/2011) को प्रकाशित करती है जो केन्द्रीय सरकार को 07-01-2015 को प्राप्त हुआ था।

[सं. एल-40012/74/2010-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 8th January, 2015

S.O. 100.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 42/2011) of the Central Government Industrial Tribunal-cum-Labour Court, Luncknow now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Ltd., Saharanpur and their workman, which was received by the Central Government on 07/01/2015.

[No. L-40012/74/2010-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, LUCKNOW

PRESENT : RAKESH KUMAR, Presiding Officer

I.D. No. 42/2011

Ref.No. L-40012/74/2010-IR(DU) dated 22.03.2011

BETWEEN :

Sh. Bablu S/o Sri Ram Lal
Vill. Lakhnauti Kalan, PO Puvarika
Saharanpur (U.P.)

AND

1. The General Manager
   Bharat Sanchar Nigam Ltd.
   Mission Compound
   Saharanpur (U.P.)
2. The Sub Divisional Officer
   Bharat Sanchar Nigam Limited
   Telephone Exchange, Behat Road
   Chowdhary Vihar, Near Kotwali Dehat
   Saharanpur (U.P.)

AWARD

1. By order No. L-40012/74/2010-IR(DU) dated 22.03.2011 the Central Government in the Ministry of Labour, New Delhi in exercise of powers conferred by clause (d) of sub section (1) and sub section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947) referred this industrial dispute between Sri Bablu S/o Sri Ram Lal, Vill. Lakhnauti Kalan, PO Puvarika, Saharanpur and the General Manager, Bharat Sanchar Nigam Ltd. Mission Compound, Saharanpur & the Sub Divisional Officer, Bharat Sanchar Nigam Ltd., Telephone Exchange, Behat Road, Chowdhary Vihar, Near Kotwali Dehat, Saharanpur for adjudication.

2. The reference under adjudication is:

"WHETHER THE ACTION OF THE MANAGEMENT OF BHARAT SANCHAR NIGAM LIMITED IN TERMINATING/DISENGAGING THE SERVICES OF SRI BABLU S/o SRI RAM LAL W.E.F. 01.08.2007 WITHOUT ANY NOTICE AND COMPENSATION IS LEGAL AND JUSTIFIED? WHAT RELIEF THE WORKMAN IS ENTITLED TO?"

3. Applicant Sh. Bablu Kumar has submitted a claim statement dated 30.04.2012 before this Tribunal, stating therein that he was appointed as CABLE JOINTER in the year 2001 under the subordination of opposite party. He was paid salary on ACG 17 which was much less than minimum wages. The workman further stated that he was terminated on 01.08.2007 without assigning any reason. He had worked more than 240 days. No notice, notice-pay,

gratuity or compensation was paid to him. Several verbal and written request was made but he was not paid salary from January 2007 to 31st July 2007 which comes under unfair labour practice. Applicant worked under Sub Divisional Officer. He made several requests to SDO but he has given assurances only. Applicant requests he may be reinstated with back wages. The said workman has prayed to set aside the order whereby his services were terminated. He has also requested for his reinstatement in continuous service with all the back wages and other due benefits alongwith cost of the proceedings.

4. On behalf of the opposite party no. 1 & 2 written statement M-9 dated 18.06.2012 was filed before this Tribunal. The facts mentioned in the written statement and the specific averments emphasize that the claim statement is absolutely false and fabricated without any substantive evidence. The opposite parties have also pleaded that workman has never been engaged in the post of Cable Jointer, and the post of Cable Jointer is neither available in the Bharat Sanchar Nigam Ltd. nor any SDO is competent to engage any labour. The opposite parties have submitted that BSNL exchange Behut Road, Chauddhari Vihar was started on 1st April 2003 and on Sept. 2002 the generator was provided to the said exchange then how can the workman be engaged in the year 2001. The opposite parties have pleaded that workman was not engaged in any activities of the exchange then how can the services of the workman be terminated without notice and why the workman is able to get his salary. The opposite parties have also stated that workman through Advocate has sent a notice which was replied to him. The opposite parties have pleaded that SDO can not engage any labour, he can not appoint Cable Jointer and neither can he do any retrenchment of labour. It has been stated that this workman has never been engaged for any sort of work then how he can be terminated from the work without notice.

5. It has also been pleaded in the written statement that the workman was not engaged in any sort of work so the question related to payment of his salary does not arise.

6. The opposite parties have stated that the relief sought is ambiguous and can not be given by the Tribunal, per contra it has been emphasized by opposite parties that the relief requested is misconceived and liable to be rejected in the interest of justice.

7. After filing of written statement before this Tribunal by the opposite party, sufficient opportunity was given to the workman for filing rejoinder. Although several opportunities were given but none was present on several dates. It appears that the workman does not want to pursue his claim on the basis of so called present industrial dispute. Resultantly no relief is legally required to be given to the workman Sri Bablu Kumar. The reference under adjudication is answered as NO CLAIM AWARD accordingly.

8. Award as above.

LUCKNOW
07.11.2014

RAKESH KUMAR, Presiding Officer

नई दिल्ली, 8 जनवरी, 2015

का.आ. 101.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार दूरसंचार विभाग, अहमदाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ संख्या (सीजीआईटीए) 709/2004] को प्रकाशित करती है जो केन्द्रीय सरकार को 07-01-2015 को प्राप्त हुआ था।

[सं. एल-40012/33/2000-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 8th January, 2015

S.O. 101.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [I.D. No. (CGITA) 709/2004] of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Telecom Department, Ahmedabad and their workman, which was received by the Central Government on 07/01/2015.

[No. L-40012/33/2000-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Binay Kumar Sinha,
Presiding Officer, CGIT cum Labour Court,
Ahmedabad, Dated 2nd December, 2014

Reference : (CGITA) No-709/2004

Reference : (I.T.C.) No. 20/2000 (old)

1. Divisional Engineer (Coaxial Maintenance)
   2nd Floor, City Telecom Building, Jail Road,
   Vadodara (Gujarat) - 390001

2. Divisional Engineer (Microwave Project)
   Microwave Building,
   Nr. Navrangpura Telephone Exchange,
   Ahmedabad (Gujarat)- 380006

(management) ...First Party

And

Their Workman
Devabhai Malabhai Bharwad,
At. Palej GIDC,
Nr. Water Tank,
Bharuch (workman) ...Second Party

For the first party : Shri N. K. Trivedi, Advocate

For the second party : None

AWARD

The Government of India/Ministry of Labour, New Delhi vide Order No. L-40012/33/2000-IR(DU) dated 29.05.2000, referred the dispute for adjudication to this tribunal in respect of the matters specified in the Schedule:

SCHEDULE

"Whether the action of the management of Telecom Dept. in terminating the services of Sh. Devabhai Malabhai Bharwad is legal and Justified? If not, to what relief the workman is entitled and from what date?"

2. Parties to the case appear on notice and filed respective pleadings. The 2nd party workman filed S/c (Ext.7) and the 1st party its W/s (Ext.12) attached with necessary documents.

3. The case of the 2nd party as per S/c is that he was engaged as security guard by the 1st party no . 2 of his Palej M/w station for the year 1997 to 30.11.1998 on monthly payment of Rs. 1,500/- and that the 2nd party has worked for 240 days in 12 calendar month. But without any reason, he was removed from the service of security guard with effect from 01.12.1998.Such action on part of the 1st party is illegal and improper since no retrenchment notice was given to him and no retrenchment compensation was given and the 1st party has contravened the provision of section 25 (F) of the industrial Dispute Act. The 2nd party has sought for relieve for his reinstatement with full back wages and to grant any other relief for which he is found entitled.

4. As against this the contention of the 1st party interalia as per W/s is that the reference is not maintainable, the concern workman has no cause of action. It has been denied that the concern person Devabhai has worked as security guard since May- 1997 at Microwave Palej under 1st party No. 2 and he was getting Rs. 1500/- per month. It has been contended that the concern person Sh. Devabhai Malabhai Bharwad has never worked for 240 days in 12 months it is also denied that he worked for 360 days in 1st party department. Para 1 to 16 of the S/c has been denied.The case of the 1st party is that the concerned person Devabhai was engaged as daily rated labour since January-1999 to May-1999 for 121 days of only and he was not given duty of security guard. He was engaged as casual labour and for work only to Palej Microwave. The concern person was being paid daily wages. The case is that the1st party, Microwave R/R station was taken over by maintenance staff from SDE Microwave Project, Ahmedabad on 30.11.1998 and the concern person Shri Devabhai was engaged from 01.01.1999. His job is not continuous, as a fresh casual labour he was given work on need based basis. On these, scores, prayer is made to dismiss the reference since the 2nd party is not entitled to get any relief.

5. The 2nd party Devabhai M. Bharawad in his examination in chief at Ext.35 on 14.02.2006 and his cross examination was adjourned for next date was partly performed by the lawyer of the 1st party and it was fixed for next date for cross examination but there after the 2nd party workman did not appear on dates. However cross examination could not be completed by the 1st party lawyer, the case record transferring from one court to another since post of Presiding officer of C.G.I.T. was vacant and case record by the order of MOL, New Delhi were transferred where it remained pending till November, 2010 there after the case record was sent to this C.G.I.T. by order of MOL and fresh notice was issued to the parties and the 1st party through lawyer Shri N.K Trivedi appeared and is making proper pairvi on behalf of the 1st party whereas inspite of notice, the 2nd party failed to appear. On 03.04.2014, an application was filed on behalf of the 1st party that oral evidence of the 2nd party be expunged since he failed to appear for cross examination on the last date. The affidavit in lieu of cross examination in chief of witness of the 1st party namely, Sh. Saji Samuel, Divisional Engineer Telecom Project, Division-1, Microwave division at (Ext. 38) is filed but the 2nd party or his representative failed to appear for cross examination of the 1st party witness. On 27.11.2014 an application Ext. 39 has been filed on behalf of the 1st party that the 2nd party failed to appear since long whereas the 1st party is making pairvi on dates to close the stage of evidence of 2nd party prayer has been made for dismissing the reference.

6. Consider the situation that on earlier occasion the 2nd party appeared in the case and as S/c his oral evidence failed to appear for cross examination. The oral evidence of workman at Ext. 35 has got no evidentiary value rather it is fit to be expunged. 1st party witness has also filed his affidavit in lieu of examination in chief. But there is no need for going through the affidavit examination of the 1st party witness because onus is upon the 2nd party workman Sh. Devabhai M. Bharwad to prove his case that he completed 240 days work in 12 calendar of month and he was not given notice under section 25F of the ID Act one month notice pay, the 2nd party has failed to prove his case as per S/c, there is clear contention of the 1st party as per W/s that the 2nd party was engaged at daily rated casual worker for 121 days which has to be accepted

and it is proved that the 2nd party has not completed 240 days in any calendar year and so there was no need for giving retrenchment notice or 1 month pay in lieu of notice or retrenchment compensation under the provision of section 25 (f) of the I.D. Act.

7. On such consideration, the terms and reference is adjudicated that the action of management of Telecom Department in terminating the services of Devabhai is legal and justified the concern workman is not entitled to any relief in this case.

As such this reference is dismissed. No order as to cost.

BINAY KUMAR SINHA, Presiding Officer

नई दिल्ली, 8 जनवरी, 2015

का.आ. 102.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार अधीक्षक, डाक कार्यालयों और दूसरों के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, चेन्नई के पंचाट (संदर्भ संख्या 62/2014) को प्रकाशित करती है जो केन्द्रीय सरकार को 07-01-2015 को प्राप्त हुआ था।

[सं. एल-40012/25/2014-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 8th January, 2015

S.O. 102.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award (I.D. No. 62/2014) of the Central Government Industrial Tribunal-cum-Labour Court, Chennai now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Superintendent of Post Offices and Others and their workman, which was received by the Central Government on 07/01/2015.

[No. L-40012/25/2014-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, CHENNAI

Wednesday, the 24th December, 2014

Present : K.P. PRASANNA KUMARI, Presiding Officer

Industrial Dispute No. 62/2014

[In the matter of the dispute for adjudication under clause (d) of sub-section (1) and sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947(14 of 1947), between the Management of Department of Posts and their workman]

BETWEEN

Smt. J. Manimegalai	:	1st Party/ Petitioner

AND

1. Superintendent of Post Offices Ramanathapuram Division Ramanathapuram-623501	:	2nd Party/ 1st Respondent
2. Assistant Superintendent of Post Offices Paramakudi Sub-Division Paramakudi-623707	:	2nd Party/2nd Respondent

Appearance :

For the 1st Party/ Petitioner	:	M/s. R. Malaichamy, Advocates
For the 2nd Party/ Respondents	:	Sri M. Liagatali, Advocate

AWARD

The Central Government, Ministry of Labour & Employment vide its Order No. L-40012/25/2014-IR (DU) dated 15.07.2014 referred the following Industrial Dispute to this Tribunal for adjudication.

The schedule mentioned in that order is :

"Whether the action of the management of Department of Posts in terminating the services of Smt. J. Manimegalai without following the principles of natural justice and provisions of Section-25F of the ID Act is justified? If not, to what relief the workman is entitled to?"

2. On receipt of the Industrial Dispute this Tribunal has numbered it as ID 62/2014 and issued notice to both sides. Both sides entered appearance through their counsel and filed their Claim and Counter Statement respectively.

3. The averments in the Claim Statement filed by the petitioner in brief are these:

Jayapandian was the Gramin Dak Sevak Mail Deliverer/Mail Carrier in the Second Respondent's Office at Thaduthalankottai Branch Office. During the period from 01.01.2006 to 31.08.2009 Jayapandian was officiating as Postman of Paramakudi H.O. The petitioner was ordered to carry out the duties of Gramin Dak Sevak during this period and the same was approved by the Second Respondent. Jayapandian was promoted to the post of Postman on permanent basis w.e.f. 16.10.2009. After this, the petitioner was permitted to continue to work as Gramin Dak Sevak Mail Deliverer at Thaduthalankottai till 01.11.2012. She worked against a clear vacant post from 16.10.2009 and completed more than 240 days of work. The stop-gap arrangement were extended from time to time by the Second Respondent. The appointment of the

petitioner was approved by the Second Respondent. After 01.11.2012 the petitioner was denied work without prior notice. The Postal Department is an industry. The Department of Posts, Gramin Dak Sevak (Conduct and Engagement) Rules has not been framed under Article-309 of the Constitution of India. The service condition of GDS are deemed to be governed by industrial laws of the country. The action of the Respondent in removing the petitioner from service without passing an order and to deny work to the petitioner amounts to violation of Section-25F of the ID Act. The dispute is raised accordingly. The petitioner is entitled to an order of reinstatement in service with continuity of service, back wages and all other attendant benefits.

4. The Respondents have filed Counter Statement contending as follows:

The petitioner, W/o Jayapandian was permitted to perform the work of GDS, Thaduthalankottai Branch Office as outsider. When Jayapandian officiated as Postman at Paramakudi he substituted his wife to work as GDS without any permission from the Respondents. In the meantime, Jayapandian was promoted as Postman on regular basis from 16.10.2009 and thus the post of GDS at Thaduthalankottai Branch Office has fallen vacant. The petitioner was engaged as GDS on stopgap arrangement from 16.10.2009 to 01.11.2012 with occasional breaks by the Sub-Divisional Head. In the meanwhile permission was issued by the competent authority to fill up the post and notification was issued for this purpose. Candidates including the petitioner have applied for the post. After conducting interview, the most meritorious candidate was selected for the post. The petitioner was only engaged on stop-gap arrangement and she was paid only for those days for which she was engaged except Sundays and Postal Holidays. The petitioner was neither appointed to the post nor was terminated. The claim of the petitioner that she had rendered more than 240 days work is not correct as she was paid only for those days she worked. As the petitioner was only an outsider and was engaged only as a substitute notice under Section-25F of the ID Act does not arise. The section is applicable only to the regular employees. The petitioner is not entitled to any relief.

5. The evidence in the case consists of oral evidence of WW1 and documents marked as Ext.W1 to Ext.W19. No oral or documentary evidence was adduced on the side of the Respondents.

6. **The points for consideration are :**

(i) Whether the action of the respondents in terminating the service of the petitioner is justified?

(ii) What, if any, is the relief to which the petitioner is entitled?

The Points

7. The petitioner had worked as Gramin Dak Sevak at Thaduthalankottai Branch Office of the Respondents for some time. Her husband was the Gramin Dak Sevak of Thaduthalankottai. When he was asked to officiate as Postman at Paramakudi, he engaged his wife as Gramin Dak Sevak at Thaduthalankottai. It is seen from the Counter Statement itself that this engagement claimed by the petitioner is true, even though she has not produced any documents showing this. The Respondents have stated in the Counter Statement that when Jayapandian started to officiate as Postman he substituted his wife to work as GDS, even though according to the Respondents it was without permission. It is also admitted by the Respondents that from 16.10.2009 on which date Jayapandian was permanently posted as Postman, the Sub-divisional Head had engaged the petitioner as GDS on stop-gap arrangement. As seen from Ext.W1 to Ext.W9, the petitioner had worked for the period from 01.01.2010 to 28.02.2010, 01.03.2010 to 30.04.2010, 01.05.2010 to 30.06.2010, 02.07.2010 to 31.08.2010, 01.09.2010 to 31.10.2010, 01.01.2011 to 28.02.2011 and from 01.07.2011 to 31.08.2011. Thus it could be seen that during the period from 16.10.2009 to 31.08.2012 the petitioner was working as GDS even though with a gap on certain occasions. As seen from the Counter Statement the engagement had extended upto 01.11.2012 even though document is not seen produced by the petitioner for the engagement after 31.08.2012. The engagement after 16.10.2009 is certainly on a clear vacant post as Jayapandian who was the one earlier working in this post was promoted and the post had fallen vacant from 16.10.2009.

8. According to the petitioner she was terminated from service after 01.11.2012 without any prior notice in violation of Section-25F of the ID Act. According to the petitioner, she having worked for more than 240 days in a clear post she should not have been terminated. According to her, she is to be reinstated in service.

9. It could be seen from the evidence that even though the petitioner was engaged on a clear vacant post, her engagement was only as a stop-gap arrangement. Ext.W1 to Ext.W9 refer to her engagement as stop-gap arrangement only. Ext.W10 which shows payment of arrears to the petitioner refers to her as outsider. It could be seen from the evidence that the vacant post was subsequently filled-up as per the Recruitment Rules. A notification has been issued calling applications for filling up the post. The petitioner has admitted during his examination that she was also a candidate for the post and she had attended the interview that was held on 29.11.2012. Another candidate who stood above the petitioner in merits was selected for the post and was given appointment also. According to the petitioner it was because she failed in

the interview held for the post that she raised the dispute claiming reinstatement. Thus it could be seen the engagement of the petitioner even after 16.10.2009 was not as per law and the post was later filled-up by a proper recruitment process. This being the case the petitioner is certainly not entitled to an order of reinstatement in service.

10. As already stated the petitioner seems to have worked with the Respondents during the period from 2006 till the end of 2012, from 16.10.2009 as engaged by the Sub-Divisional Head itself. It is clear from the evidence and documents and also the admission of the Respondents that she was working as GDS all along even though with some breaks. She was a workman coming under the definition of Section-2(s) of the Industrial Disputes Act, the Apex Court having held that Post Office is an industrial establishment coming under the definition of the Act. It could be seen from the Counter Statement itself that the petitioner was not given any notice as contemplated under Section-25f of the Industrial Disputes Act. She was not given any compensation also. The Apex Court has held repeatedly that in such cases reinstatement is not the relief but compensation is liable to be given. Considering the fact that the petitioner had worked with the Respondents for considerable period though only as an outsider on stop-gap arrangement she is entitled to be compensated because of her termination in violation of Section-25f of the Act. The compensation amount payable to the petitioner is fixed as Rs. 1,00,000/-. The Respondents are liable to pay this amount to the petitioner. Accordingly, an order is passed as follows:

The Respondents are directed to pay Rs. 1.00 lakh to the petitioner as compensation, within one month of the award. The amount will carry interest @ 9% per annum if not paid within the prescribed time.

An award is passed accordingly.

K. P. PRASANNA KUMARI, Presiding Officer

Witnesses Examined:

For the 1st Party/ Petitioner	:	WW1, Sri J. Manimegalai
For the 2nd Party/ Respondents	:	None

Documents marked:

On the side of the Petitioner

Ex.No.	Date	Description
Ex.W1	31.10.2009	Order of the 2nd Respondent
Ex.W2	11.02.2010	Order of the 2nd Respondent
Ex.W3	09.04.2010	Order of the 2nd Respondent
Ex.W4	07.06.2010	Order of the 2nd Respondent
Ex.W5	30.07.2010	Order of the 2nd Respondent
Ex.W6	05.10.2010	Order of the 2nd Respondent
Ex.W7	01.02.2011	Order of the 2nd Respondent
Ex.W8	03.08.2011	Order of the 2nd Respondent
Ex.W9	20.06.2012	Order of the 2nd Respondent
Ex.W10	10.01.2013	Receipt of payment of arrears
Ex.W11	13.04.2013	Claim petition
Ex.W12	21.05.2013	Letter of ALC/Puducherry
Ex.W13	21.10.2013	Reply Statement (parawise comments)
Ex.W14	28.11.2013	Letter of ALC/Madurai
Ex.W15	20.11.2013	Rejoinder of the petitioner
Ex.W16	29.01.2014	Reply to rejoinder by the 1st Respondent
Ex.W17	21.02.2014	Failure report
Ex.W18	15.07.2014	Order of the Government
Ex.W19	25.07.2014	Notice of this Hon'ble Tribunal

On the side of the Management

Ex.No.	Date	Description
	Nil	

नई दिल्ली, 8 जनवरी, 2015

का.आ. 103.—औद्योगिक विवाद अधिनियम, 1947 (1947 का 14) की धारा 17 के अनुसरण में, केन्द्रीय सरकार भारत संचार निगम लिमिटेड,, अहमदाबाद के प्रबंधतंत्र के संबद्ध नियोजकों और उनके कर्मकारों के बीच, अनुबंध में निर्दिष्ट औद्योगिक विवाद में केन्द्रीय सरकार औद्योगिक अधिकरण एवं श्रम न्यायालय, अहमदाबाद के पंचाट [संदर्भ संख्या (सीजीआईटीए) 585/2004] को प्रकाशित करती है जो केन्द्रीय सरकार को 07-01-2015 को प्राप्त हुआ था।

[सं. एल-40012/47/2003-आईआर (डीयू)]

पी. के. वेणुगोपाल, डेस्क अधिकारी

New Delhi, the 8th January, 2015

S.O. 103.—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947), the Central Government hereby publishes the Award [I.D. No. (CGITA) 585/2004] of the Central Government Industrial Tribunal-cum-Labour Court, Ahmedabad now as shown in the Annexure in the Industrial Dispute between the employers in relation to the management of the Bharat Sanchar Nigam Ltd., Ahmedabad and their workman, which was received by the Central Government on 07/01/2015.

[No. L-40012/47/2003-IR(DU)]

P. K. VENUGOPAL, Desk Officer

ANNEXURE

BEFORE THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, AHMEDABAD

Present :

Binay Kumar Sinha,
Presiding Officer, CGIT-cum-Labour Court,
Ahmedabad, Dated 8th December, 2014

Reference: (CGITA) No-585/2004

Reference: (I.T.C) No- 1 of 2004 (old)

Order No. L-40012/47/2003-IR (DU)

1. The Chief General Manager,
   Telecom Dept.
   Bharat Sanchar Nigam Ltd., Khanpur,
   Ahmedabad (Gujarat)- 380001
2. The General Manger,
   Telecom Distt. , Telecom Dept.,
   Palanpur Telecom District,
   Joravar Palace,
   Palanpur (Banaskantha)- 385001

(management) ...First Party

And

Their Workman
Through the organising Secretary,
The Association of Railway and Post Employees,
15, Shashi Apartment,
Near Anjalee Cinema,
Vasna Road,
Ahmedabad (Gujarat)-380007

(workman) …….Second Party

For the first party : Shri N.K. Trivedi, Advocate

For the Union/ Second party : None

AWARD

The Government of India/Ministry of Labour, New Delhi vide Order No. L-40012/47/2003-IR (DU) dated 20.06.2003, referred the dispute for adjudication in respect of the matters specified in the Schedule:

SCHEDULE

"Whether the demand of the Association of Railway & Post employees, Ahmedabad for regularisation of services of the workman mentioned in Annexure -1 (containing list of ten workman with consequential benefits at par with the regular employees of the Telecom Department by the management of General Manager, Palanpur Telecom District, BSNL (Telecom Dept.), Palanpur is proper and justified? If so, what the concern workman is entitled for and since when?"

2. In spite of notice the union/2nd party failed to submit statement of claim in this case. Though on some dates , the 2nd party did pairvi but failed to submit S/c to show any intention to contest in this case. Whereas , the 1st party through Lawyer appeared filed Vakilpatra on 15.03.2004 awaiting filing of S/c by the Union/S.P. The case was earlier pending before Industrial Court as Reference I.T.C. 1 of 2004 thereafter received back in this C.G.I.T.-cum-Labour Court in the year 2004. Fresh notice was issued but S.P. did not appear and filed S/c. Subsequently, post of P.O., C.G.I.T.-cum-Labour Court remained vacant for long time and the record was transferred to Industrial State Tribunal by the order of M.O.L. Fresh notice was issued therein but all went invain. S.P. Did not appear and did not file statement of claim. Thereafter, in the month of November 2010 the record of the case reverted back to C.G.I.T.-cum-Labour Court. Again fresh notice was issued to parties. The 1st party remained present on dates but the S.P./Union again failed to appear.

3. On behalf of the 1st party's lawyer pursis at Ext.6 and 7 were filed that S.P. are not taking interest. Again a pursis at Ext.10 was filed on 02.12.2014 for dismissing the reference since the 2nd party have lost interest and not appeared to make contest and to substantiate their demand as per terms of reference.

4. In deed the 2nd party/Union has lost interest in this case so it is not desirable to keep this reference case pending any further. As such the terms of reference is decided against the Union/workman involved in this case that the demand of the Union for regularisation of services of the workman mentioned in Annexure- A-1 with consequential benefits at par with the regular employees of the Telecom Department by the management of general manager, Palanpur Telecom District, BSNL (Telecom Dept.) , Palanpur is not proper and justified. So, the Union/workman is not entitled to any relief. The order dated 16.08.2005 passed in the reference directing O.P. No. 1 & 2 not to transfer the complainant shall have no force now and is recalled.

Accordingly the reference is dismissed. No order of cost.

BINAY KUMAR SINHA, Presiding Officer

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